Ontario. Royal Commission on Book Publishing.
Hearings. 1971

ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING

Hearings

Mr. Richard Rohmer, Q.C.	Chairman
Dr. Marsh Jeanneret	Commissioner
Mr. Dalton Camp	Commissioner

Mr. Robert Fleming	Executive Secretary

APPEARANCES:

R. E. Holland, Q.C.	Commission Council
A. O'Donnell	Commission Council
Joseph Sedgwick, Q.C., and P.H.H. Ridout, Q.C.	for Metropolitan Toronto News Company & Affiliates.

Hearings held at 252 Bloor Street West, Toronto, Ontario, July 13, 1971. 14

This transcript has not been edited, corrected or revised by the Commissioners, but may subsequently be edited, corrected and revised.

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Toronto, Ontario,
July 13, 1971.

---The hearing commenced at 10.00 a.m.

THE CHAIRMAN: Ladies and gentlemen, the Royal Commission on Book Publishing is again convened. This morning we are opening a series of hearings in relation to the Second Interim Report which this Commission made to the Lieutenant Governor in Council on June 8th.

The purpose of these hearings in our view is as follows: First, to examine the practices and policies of firms engaged in the distribution and wholesaling of mass market paperback books and periodicals with particular reference to the methods employed in Ontario and the major regional centres in this province. Second, as a result of the hearings to determine whether further or other recommendations ought to be made to the Lieutenant Governor in Council in relation to matters already reported upon and, thirdly, to give an opportunity to all those affected by the Commission's Second Interim Report and by the proposed legislation to make representations to the Commission to be heard.

Now, at the outset I think it might be appropriate to make one or two statements in relation to what it is a Royal Commission can or cannot do with relation to matters of this kind having regard to the terms of reference of such

an Inquiry.

I think that I would make reference to a particular case. There is much case law on this subject but in any event there is a particular case which is referred in Re Ontario Crime Commission ex parte Feeley & McDermott, Ontario Reports 1962. In that case there is a favourable reference to the Children's Aid Society case which had been heard some years before. In that particular case Mr. Justice Riddell said this and I think it is a succinct statement of the functions and perhaps limitations of a Royal Commission:

" A Royal Commission is not for the purpose of trying a case or a charge against anyone, any person or any institution but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. It is usual and proper to have counsel appointed to assist in the Inquiry, but that does not imply that he alone has the right to call witnesses, or to determine what witnesses are to be heard. Everyone able to bring relevant facts before the Commission should be encouraged, should be urged to do so. Nor are the strict

" rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission. Moreover, everyone should have the right to cross-examine any witness whom he believes to be in error or to be supressing facts. This right, of course, is not to be abused by irrelevant questioning."

Now, there are many other statements of law which relate to what I consider to be a succinct proposition. This is not a trial, there are not parties in this matter. There are people who are interested in the processs we are engaged in and we will do our utmost to ensure that everyone is heard and has an opportunity to say his piece.

There will be examination and cross-examination and, if required at any time, counsel or any witness can request the protection of the Ontario Evidence Act and the Canada Evidence Act if they wish to do so.

Having said this, we will proceed. Counsel for the Commission is Mr. Holland. He has been responsible for the preparation of the proceedings today and I would ask Mr. Holland if he would commence.

MR. HOLLAND: Thank you, Mr. Chairman.

Perhaps I can first introduce to you and to the Commissioners, Mr. O'Donnell who appears with me as Associate Commission Counsel. Mr. Joseph Sedgwick, Q.C. and Peter Rideout, Q.C., appear for Metro Toronto News and its Associated Companies. I know of no other counsel here who at the moment wish to take part in the proceedings.

You will have noticed, Mr. Chairman and Commissioners, that on the platform there is a diagram, two lists of names and two maps. In preparation of the evidence for the Commission it seemed clear that there was quite often some trouble in the use of names to describe certain companies and the functions that they perform. So, if I may deal first with the diagram, it appeared from our investigation that periodicals and softback books came first from the publishers to what we have called a North American distributor. It went then from the North American distributor to, in Ontario, what we have called Ontario geographical wholesalers. The two lists show, first, the main North American distributors -- and there were 13, 12 of whom are United States distributors primarily or come from the United States and one of which is English. There are then 19 Ontario geographical wholesalers and those wholesalers are also listed.

If I may then direct your attention to the two maps, you will see, of course, that the maps represent southern and northern Ontario. We

have shown the geographical location of the Ontario geographical wholesalers on these maps and to some extent the territory covered by these wholesalers has been coloured in different colours on the maps.

I would ask, Mr. Chairman, that the chart or diagram be marked as the first exhibit to this hearing, that the two lists be marked as the second exhibit, that the map of southern Ontario be marked as the third exhibit and the map of northern Ontario be marked as the fourth exhibit and I suggest that these exhibits could be marked at this time by the Secretary.

THE CHAIRMAN: Yes, we will do that.

---EXHIBIT NO. 1: Diagram.

---EXHIBIT NO. 2: Two lists of names.

---EXHIBIT NO. 3: Map of southern Ontario.

---EXHIBIT NO. 4: Map of northern Ontario.

MR. HOLLAND: While these are being marked, Mr. Chairman, if I may call the first witness and have him sworn, Mr. Mark Molasky.

MR. SEDGWICK: As Mr. Holland has told the Commission I am representing Metro Toronto News and its Affiliates and Mr. Mark Molasky, who lives in St. Louis, Missouri, is the President of the dominant company, Metro Toronto News and I merely

want to comment on my position as his counsel.

According to an undertaking that was given by calling Mr. Ridout, we are producing Mr. Molasky and also producing the Manager of the company, a Canadian, Mr. John Romanez who has been subpoenaed but I had intended to produce him whether he had been subpoenaed or not. I believe through Mr. Ridout and myself we have co-operated fully with Commission Counsel.

Mr. O'Donnell, who is Mr. Holland's associate attended in St.Louis at our invitation and examined all the documents dealing with the acquisitions of distributorships which have been made by clients.

Then, in a letter to Mr. Ridout on June 24th of this year, Mr. Holland asked for certain information and all of that information I believe, has been supplied in a letter from Mr. Ridout to Mr. Holland, dated the 7th of July, 1971. I say all of the information. Mr.Holland asked for lists of paperbacks and magazines that are distributed by my clients and it would have taken weeks to list them, they change constantly, but Mr.Romanez who will be called can, I think, give the Commission sufficient information as to the scope of our distributorship.

Then, in the subpoena to Mr. Romanez the documents asks that he should produce the last audited financial statement of my clients. I am not willing to produce that statement for

public inspection because it is sent to me -- and I believe-- that it will embarrass us with the publishers, with North American distributors, with rival geographical wholesalers and also with retail dealers.

THE CHAIRMAN: Mr. Sedgwick, on the point that you raised with respect to that, we could say to you that for public inspection we do not want to receive the document for our confidential use, if that might be satisfactory?

MR. SEDGWICK: I spoke to Mr. Holland about it and I merely say this now so that it can be of record: my clients will produce it on those conditions, that is, that it is for the confidential information of the Commission and counsel and that in any report that may be made it will not be referred to as to figures and data.

THE CHAIRMAN: This will be satisfactory as far as the Commission is concerned.

MR. HOLLAND: Mr. Chairman, I think that is quite satisfactory. We would, however, like to have a figure for the gross sales.

MR. SEDGWICK: I don't think we have any objection to that. It is the breakdown which is in question, profits and losses.

THE CHAIRMAN: These data are a matter of record for most of the firms in the trade.

MR. SEDGWICK: Then, Mr. Chairman, may I make a comment?

THE CHAIRMAN: I would be surprised if you didn't.

MR. SEDGWICK: The Interim Report is dated the 18th of June, 1971 and it led to the passing of Bill No. 34 on the 14th of June. I was retained subsequent to the 14th of June and I wrote Mr. Holland asking that I be given access to any evidence that had been taken by the Commission theretofore and on June 30th Mr. Holland wrote me:

> "The Commission has not taken any evidence to date."

That was the 30th of June and I must say that I find it strange that on no evidence at all the Commission should make a report.

THE CHAIRMAN: Mr. Sedgwick, before you go any further on that particular point, I think that Mr. Holland made it quite clear that the Commission had no hearings and taken no evidence in relation to this matter prior to that time or prior to this time but certainly the Commission had undertaken an investigation and had certain facts before it before it made its recommendations.

MR. SEDGWICK: Mr. Chairman, I am aware of that but ordinarily Royal Commissions sit, hear evidence, cogitate and sift evidence and make reports. I have had to deal with a great many

of them, including the Feeley one and I had thought that that was the way it should be done because, as you are aware, the Interim Report seems to be largely directed at my clients and as a result ended in legislation seriously handicapping them.

Indeed, thinking the matter over, the only parallel that came to mind was Alice in Wonderland where, you recall, the White Queen said "Sentence first and verdict afterwards". I do hope when the evidence is before the Commission, it may correct or modify the views that it expressed before it had any evidence and only had what must be necessarily the one-sided evidence of private investigations. Having said that, Mr. Molasky is here. I will produce him and I felt the convenient way to proceed would be to have Mr. Holland ask him any questions that he cares to ask him and then, if there are some matters that I think would be helpful and have not been touched on, I trust I may be permitted to ask a few questions then.

THE CHAIRMAN: It will be our practice, Mr. Sedgwick, we may at our discretion, ask questions ourselves.

MR. SEDGWICK: Of course, that is the function of Royal Commissions.

THE CHAIRMAN: Before that, may I also say we have anticipated all of that and we have said, really, at the outset, the purposes, among other things, our set purpose is to do exactly that which you suggest. If circumstances warrant, we are prepared to make further recommendations to the Legislature.

MR. SEDGWICK: Of course, thank you.

MR. HOLLAND: Mr. Molasky?

MR. SEDGWICK: May I just make a comment that probably comes better from me than Mr. Molasky. Mr. Molasky, as you see, is a young man of 24 years, but it is an old family business founded in the early years of this century by Mr. Molasky's great grandfather. I would not want the Commission to think that he, at 24, had created this business.

THE CHAIRMAN: We are aware of that little bit of history you have given us. We welcome Mr. Molasky. In these circumstances we are taking our evidence under oath and I would be obliged, if you would take the Bible and swear.

MARK MOLASKY, sworn

EXAMINATION BY MR. HOLLAND:

Q. You are Mark Molasky?

A. Yes.

Q. Where do you reside?

A. St.Louis, Missouri.

Q. How old are you?

A. 24.

Q. You are the son, I believe, of Allan Molasky?

A. Yes.

Q. Also of St.Louis, Missouri?

A. Yes.

Q. What is your position with Pierce News Company Incorporated of St.Louis?

A. President.

Q. Do you hold any other position with that company, any special position as a director?

A. Exporter, director and treasurer.

Q. Are you responsible for acquisitions for that company?

A. Yes.

Q. I understand that Pierce News Company owns Metro Toronto News Company Limited?

A. Yes.

Q. Which, in turn, owns 50 per cent of the limited partnership known as Metro Toronto News Company?

A. Yes.

Q. Who owns the other 50 per cent?

A. I believe Milton Rottman and his family.

Q. Where are they from?

A. Bridgeport, Connecticut.

Q. And I understand that under the arrangement with the Rottman family, Metro Toronto News Company is actually controlled and managed by Pierce News Company Incorporated of St.Louis?

A. Yes, managed by Pierce News Company, not controlled.

Q. It is managed by Pierce News Company?

A. Yes.

THE CHAIRMAN: I might ask the question, who controls it?

THE WITNESS: It is a 50-50 ownership.

MR. HOLLAND: Q. Between the Molasky group and the Rottman family?

A. Yes.

Q. But managed by the Molasky group?

A. By Pierce News Company.

Q. That is a family company, if I can put it to you that way?

A. Right.

Q. Can we refer to it as the Molasky family group, then?

A. Yes.

Q. So the control rests with you and your father?

A. Yes.

Q. In our investigation we have come across another company called Somerset Specialties Limited. Who controls that company?

A. Pierce News Company.

Q. Can we call it, again, the Molasky family group?

A. Yes.

Q. And as I understand it, Somerset Specialties Limited now owns, or controls

Lambton News Service of Sarnia and TV Carrier Sales, also of Sarnia?

A. Yes.

Q. Then we come across another company, Somerset Enterprises Limited. Do you know of that company?

A. I would have to ask Peter Ridout.

Q. That is your solicitor?

A. Yes.

Q. I am showing you a letter on the letterhead of Somerset Enterprises Limited, that is a Xerox copy of the letter. Is that your signature?

A. Yes.

MR. HOLLAND: May this be the next Exhibit, Mr. Chairman?

THE CHAIRMAN: Would you identify the document?

MR. HOLLAND: This is a letter, Somerset Enterprises Limited, headed "Somerset Enterprises Limited, 85 Richmond Street West, Toronto, Ontario:

"Dear Retailer . . ."

THE CHAIRMAN: Is there a date?

MR. HOLLAND: No date.

"Dear Retailer: Effective immediately Somerset Enterprises Limited, which is affiliated with Metro Toronto News Company, has been appointed distributor for

Triangle Publications in your area. This includes TV Guide, Seventeen and other quality publications. We have not as yet established an office in the Kitchener area, but we will be doing so very shortly and you will be notified immediately thereof. If you have any problems, please consult your delivery service man.

"Yours sincerely,

"Somerset Enterprises Limited.

"(Signed) Mark Molasky,

"President."

MR. SEDGWICK: So we will not be labouring under a misunderstanding, I am told there is no Somerset Enterprises Limited. It is a secretarial error and it should have said "Somerset Specialties Company". There is no company of this name.

MR. HOLLAND: I wondered, because we couldn't find it in the search.

MR. SEDGWICK: The name was changed to Somerset Specialties.

MR. HOLLAND: Getting back to Somerset Specialties Limited, is it correct that Somerset Specialties Limited purchased all the outstanding shares of Western Ontario Distributors Limited of London?

A. Yes.

---EXHIBIT NO. 5: Letter from Somerset Enterprises Limited (copy) undated

MR. HOLLAND: Q. So I gather from that the Molasky family also controls the distribution in the London area?

A. Yes.

THE CHAIRMAN: Would you ask him when he sent out that Exhibit 5?

MR. HOLLAND: Q. That letter to retailers in the Kitchener area, can you tell us approximately when that letter was sent?

A. I believe it was sent on Monday morning.

Q. But what date?

A. The last week in May.

Q. The last week in May?

A. Yes.

Q. Of this year?

A. Yes.

Q. Is it also correct that Metro Toronto News Company Limited, which is fully-owned by Pierce News Company Incorporated of St.Louis, bought the shares in Upper Canada News Limited of Belleville?

A. Yes.

Q. So, as I understand it, the Molasky group at the present time, has 50 per cent, including the management of the Toronto area, has 100 per cent of Sarnia, 100 per cent of

London and 100 per cent of Belleville?

A. Yes.

THE CHAIRMAN: I wonder, Mr. Molasky, this is a procedure not too many of us are used to. I wonder if you would, to record the answer, you would say "Yes" or "No" instead of nodding.

THE WITNESS: All right.

MR. HOLLAND: Q. The answer was?

A. We bought the territorial -- we did not buy the Upper Canada corporation.

Q. You bought the territory?

A. Yes.

Q. I see. And you were the man in charge of acquisition on behalf of Pierce News Company and in charge of the acquisition of these areas?

A. Yes, sir.

Q. And from this, is it fair to say that you are fairly familiar with distribution and wholesaling of periodicals and paperbacks in Ontario?

A. Not 100 per cent, but fairly familiar.

Q. You heard my introduction ---

THE CHAIRMAN: We are having difficulty hearing.

MR. SEDGWICK: I can't hear either. I don't know if it is too low in this direction, or maybe not working at all.

THE CHAIRMAN: It is working. Just get right up to it. We would have to hang something around our necks to do this.

MR. HOLLAND: Q. Mr. Molasky, I think you heard my introduction of the first four Exhibits to the members of the Commission?

A. Yes, sir.

Q. Dealing with Exhibit 1, which is the chart, was my introduction correct in indicating a flow of periodicals and paperbacks from the publishers, to start with, to or in the direction of North American distributors and from there in Ontario to Ontario geographical wholesalers?

A. Yes, sir.

Q. Dealing with Exhibit 2, which is a list of distributors and Ontario geographical wholesalers, I think you have had an opportunity of studying that list?

A. Yes, sir.

Q. And the distributors are 13 in number. Would you agree that those 13 represent the great majority of the North American distributors, that is, in the amount of material distributed in this line?

A. Yes, sir.

Q. I think you have also had a chance to look over the 19 Ontario geographical wholesalers. Would you again agree that, subject to a few small, minor wholesalers, those cover --

that list covers the whole list in Ontario?

A. Yes, sir.

Q. I think you have also had a chance to look at the map of Southern Ontario, Exhibit 3. Is there anything you see wrong with that map, insofar as the geographical location of these wholesalers is concerned?

A. No, sir.

Q. You will notice that some of the areas on the map are listed in red and, in particular, Sarnia and Western Ontario Distributors in London and Belleville. Are those the geographical areas covered by those three Ontario geographical wholesalers?

A. Yes, sir.

Q. And there is also listed or shown, Metro Toronto News Company, but that is shown as a dot, and, as I understand it, the area of Metro Toronto News Company extends, actually, right up to Parry Sound, right up to Bruce Peninsula, is that correct?

A. Yes, sir.

Q. I have a crayon here. If you can, would you sketch in the area controlled geographically by Metro Toronto News Company, or possibly you can show it on an overlayer.

Q. Could I ask Mr. Romanez?

MR. HOLLAND: Mr. Romanez, would you mind coming up and assisting Mr. Molasky?

THE CHAIRMAN: I take it, Mr. Holland,

Mr. Romanez will be called later on to substantiate the veracity of the evidence we are now about to hear?

MR. SEDGWICK: I think, when we come to the details of distributorships, Mr. Romanez, who is here, knows the day-to-day operation and is a more reliable witness than Mr. Molasky, who is in St.Louis and only knows in a general way, for instance, as the specific retailers who are served, I prefer to rely on Mr. Romanez. I don't think Mr. Molasky does know.

MR. HOLLAND: Q. Mr. Molasky, with the assistance of Mr. Romanez, you have now marked the area serviced by Metro Toronto News Company. Is that correct?

A. Yes, sir.

Q. Then, I would like to turn to Metro Toronto News Company and Metro Toronto News Company Limited. When did Pierce purchase Metro Toronto News Company Limited?

A. Approximately two and a half years ago, maybe three years.

Q. As I understand it the transaction closed on January 14th, 1969. Would that be correct?

A. Yes.

Q. And from whom was this company purchased?

A. Mr. Swindon and Ben Wilcox.

Q. And what was the purchase price?

A. $1,900,000 Canadian.

Q. And that was for a half interest, as I understand it, in the business because the Rottmans had the other half?

A. Yes, sir.

Q. And was that paid in cash?

A. Yes, sir.

Q. Was the financing for that $1,900,000 arranged through Canadian sources or Canadian banks?

A. Through our own sources in St. Louis.

Q. And can you tell us please the volume of sales of Metro Toronto News Company as of 1970, the gross sales?

A. $10,500,000 U.S.

Q. And this represents, as I understand it, sales of periodicals and paperbacks in the area that you have just shown on Exhibit 3?

A. Yes, sir.

Q. I assume that you are personally familiar with the legislation proposed in Ontario dealing with the ownership of what we might call geographical wholesalers by non-residents?

A. Yes, sir.

Q. And, generally speaking, that legislation required, as I understand it, 75 per cent Canadian ownership of wholesalers in businesses acquired on or after June 14th, 1971?

A. Yes, sir.

Q. So the effective date was June 14th, 1971?

A. Yes, sir.

Q. When did you first hear of this proposed legislation?

A. June 14th, 1971.

Q. From whom?

A. From Mr. Romanez.

Q. And how?

A. By telephone.

Q. To St. Louis?

A. Yes, sir.

Q. That was the first you had heard of it?

A. Yes, sir.

Q. Then, Mr. Molasky, I want to turn to Sarnia and the acquisition of Lambton News and TV Carrier.

THE CHAIRMAN: Mr. Holland, before you move to that, I have recorded the last answer.

I would like you to ask, please, if there are any agreements or other arrangements between Pierce News Company as principal shareholders, as 50 per cent shareholders in Metro Toronto News as to a limited partnership, if there are agreements as to control, if there are agreements in relation to management and if there are such agreements, can we have those produced in due course?

THE WITNESS: My attorneys have those agreements.

THE CHAIRMAN: Do I make myself clear, Mr. Sedgwick?

MR. SEDGWICK: Yes. You mean the agreement between the two partners of Pierce News?

THE CHAIRMAN: No, the two partners in Metro Toronto News.

MR. SEDGWICK: Yes, Pierce News is one company and Rottman is the other partner.

MR. HOLLAND: That is correct.

MR. SEDGWICK: I am told by my colleague here from St. Louis that we can get them but not today, they are not here.

THE CHAIRMAN: That is what I suggested, if they can be furnished in due course.

MR. SEDGWICK: Yes, we will get them.

MR. HOLLAND: Q. Then, if we can turn to the acquisition of Lambton News and the TV Carrier in Sarnia. I am showing you a Xeroxed copy of what appears to be an agreement of purchase and sale dealing with Lambton News Service and TV

Carrier Sales and can you identify your signature as appearing on page 11 of that agreement?

A. Yes, sir.

MR. HOLLAND: May this be the next exhibit, Mr. Chairman?

THE CHAIRMAN: It will be Exhibit 6.

---EXHIBIT NO. 6: 11-page agreement between Lambton News and TV Carrier, Sarnia and Pierce News Company.

MR. HOLLAND: Q. Mr. Molasky, I am showing you an extra copy of this agreement which you can use if you wish and this agreement is dated May 25th, 1971 and the purchase price was $239,000 cash. Was that purchase price paid?

A. Yes, sir.

Q. And was this also financed in St. Louis?

A. No, it was financed through the Toronto-Dominion Bank.

THE CHAIRMAN: To what extent and under what mechanism was that undertaking with the Toronto-Dominion Bank?

MR. HOLLAND: Q. Was it fully financed through the bank?

A. Yes, sir.

Q. And was it guaranteed by some company or individual, was the loan guaranteed in some way?

A. It was guaranteed by Metro Toronto News Company Limited, Pierce News Company,

Mark Molasky and Allan Molasky.

Q. And it appears from this agreement that the gross sales for the year prior to the agreement was $465,000?

A. Yes, sir.

THE CHAIRMAN: Mr. Holland, are the usual bankers for Mr. Molasky's organization the Toronto-Dominion Bank?

THE WITNESS: Yes, sir.

MR. HOLLAND: Q. Would you turn to page 7 of the agreement, Mr. Molasky, paragraph 5 and I will read it to you:

"The transaction of purchase and sale resulting from your acceptance of this offer shall be closed at the offices of Messrs. Manning, Bruce, Macdonald and Macintosh, Toronto, Ontario at the hour of eleven o'clock in the forenoon on the 30th day of June, 1971 or at such other place and such other date and time as may be mutually agreed upon which date and time or other date and time is herein referred to as the time of closing or the date of closing."

Did I correctly quote that paragraph?

A. Yes, sir.

Q. And the closing date, then,

was the 30th of June, 1971 or such earlier time as might be agreed upon?

A. Yes, sir.

Q. And that date would be after the effective date of the legislation?

A. Yes, sir.

Q. When was the transaction, in fact, closed?

A. June 11th, 1971.

Q. That was a Friday, I believe?

A. Yes, sir.

Q. The legislation became effective on the Monday or the effective date was the Monday?

A. Yes, sir.

Q. Why was it closed on the Friday before the legislation became effective on the Monday?

A. I was up here attending a luncheon in Toronto, Peter Ridout --

Q. Where was the luncheon held?

A. At the Inn on the Park in Toronto.

Q. What date?

A. Wednesday.

Q. That would be the 10th?

A. Yes, sir.

Q. No, the 9th. It was held on the Wednesday you say?

A. Yes, sir.

Q. Yes?

A. I talked to Peter Ridout, Peter recommended that as long as I was here we might as well close the contract.

Q. Was your presence necessary in Toronto to physically close this transaction?

A. Yes, sir.

Q. Why?

A. The signing of the cheques.

Q. That was the only requirement that would bring you back to Toronto, to sign these cheques?

A. Yes, sir.

THE CHAIRMAN: I take it, Mr. Holland, that the discussion with Mr. Ridout in connection with the early closing, took place on the Wednesday, the 9th, is that the date it took place?

MR. HOLLAND: Q. Can you help us on that?

A. I think Mr. Ridout has some notes.

THE CHAIRMAN: If you could answer to the best of your recollection. See if you can remember.

THE WITNESS: Mr. Ridout had all the papers and he recommended that I close on June 11th.

THE CHAIRMAN: When did he make that recommendation to you, what day? You were here on the 9th.

THE WITNESS: A week prior to my

coming up.

MR. HOLLAND:Q.Around the 4th of June?

A. Yes.

Q. And was that by letter to you?

MR. SEDGWICK: Mr. Chairman, under date of July 7th, 1971, Mr. Ridout, who was the solicitor throughout and who arranged the closing set out in full in a letter to Mr. Holland the reason why the transaction was closed on June 11th.

MR. HOLLAND: With great respect, Mr. Chairman, Mr. Sedgwick is not sworn. If Mr. Ridout wishes to go in the box and give his evidence, that is fine. With great respect I would like to hear the reasons given by this witness on oath.

MR. SEDGWICK: It is a legal matter and I thought Mr. Ridout was qualified to give this information.

THE CHAIRMAN: Certainly, gentlemen, the witness is competent to give evidence. We are talking of matters which are of recent date and he is quite able to answer within the framework of his own recollection and certainly since he is in the position of a principal in relation to Mr. Ridout, I think you should pursue this matter.

MR. HOLLAND: Q. Mr. Molasky, it might be easier for you if you tell us everything that happened bringing about this early closing on the Friday, the 11th?

A. The only thing that was brought about was that I was here in Toronto, I was planning to leave town, I had no prior information and I guess when you are talking to me I knew this was to be closed strictly for a business reason and the convenience of being up here in Toronto at which time I could sign cheques.

Q. I think you mentioned some communication with your solicitor about a week before, Mr. Ridout?

A. Yes, sir.

Q. Do you remember whether that was by telephone or by letter?

A. I was travelling between St. Louis, New York and Toronto so much that I never saw my mail.

Q. And it was the suggestion of your solicitor that you closed earlier while you were in Toronto for this dinner?

A. Yes, sir.

Q. If there is any letter -- will you please search around during the recess in your solicitor's file and produce that letter?

A. I will.

Q. When did you make the financial arrangements with the bank concerning this loan?

A. The day I closed this which was May 25th.

Q. The day you signed the agreement?

A. Yes, sir.

Q. And then the money was available to be advanced or drawn at any time?

A. Yes.

Q. Was there anything to prevent you giving a direction to the bank to advance the money to your solicitors in trust so that they could sign the cheque?

A. No, but as President I felt that I should be here to close the transaction.

Q. Did you physically attend at the time of closing?

A. I did.

Q. Where was that?

A. In Mr. Ridout's office.

Q. And that was the only reason for this early closing, the fact that you were physically in Toronto and wanted to sign the cheque?

A. Besides that there were still some negotiations going on by Mr. Ridout for contracts for employees and I handled this with Mr. Ridout in the afternoon -- Board of Directors fees.

Q. Was there any other reason that the transaction would close earlier?

A. No.

Q. And you have already, I think, identified the geographical area covered by Sarnia on the map, Exhibit 3?

A. Yes, sir.

Q. Now, let us switch to London, Ontario and Western Ontario News Distributors Limited.

THE CHAIRMAN: I wonder if we might inquire as to whether this is the first trip back to Toronto by Mr. Molasky since June the 11th, or whether he has had other opportunities to visit Toronto since that period of time?

MR. HOLLAND: Q. You heard the question?

A. I have been up here two or three times.

THE CHAIRMAN: This is the first time after June the 11th you have been to Toronto?

THE WITNESS: I don't remember. I could find that in my files.

THE CHAIRMAN: We would be obliged.

MR. HOLLAND: Q. When did you return to St.Louis after June the 11th?

A. June 11th, that very day.

Q. Turning to the purchase of the London area, if we can call it that, as I understand it, this was accomplished by the purchase of 60 per cent of the shares from a gentleman by the name of Reginald Halliley and the balance of 40 per cent of the shares from William Burns,

Phillip Birch, Western News Co. Limited. Is that correct?

A. Yes.

Q. I understand that $239,000 in cash was paid to Halliley for his 60 per cent interest?

A. Yes, sir.

Q. And $125,000 in cash was paid to Burns, Birch, Western News Co. Limited for their 40 per cent interest?

A. Yes, sir.

Q. Can you tell us, first, why there was such a substantial difference in price between the 60 per cent and the 40 per cent?

A. There was a substantial difference. 60 per cent of that was controlled. It was also a matter of negotiating with Reg., 60 per cent Sarnia and 60 per cent London and it is not really a true figure. The total cash was the true figure, but the splitting up of the monies was allocated by Reg's attorney.

Q. Now, I want to ask you some questions about the acquisition of the 40 per cent interest. Did you meet William Burns and Phillip Birch with their solicitor at the Holiday Inn in London and personally negotiate this purchase?

A. At the Hunt Club, not the Holiday Inn.

Q. At the Hunt Club?

A. Yes.

Q. And the gross sales for London, I believe there is a representation in the agreement, and it is about time I put this agreement to you. I am showing you an agreement dated May 25th, 1971, addressed to Reginald Halliley, an offer by Somerset Specialties Limited to purchase shares of Western Ontario Distributors Limited. Do you recognize your signature as President on that agreement?

A. Yes, sir.

MR. HOLLAND: May this be the next Exhibit?

THE CHAIRMAN: That will be Exhibit 7.

---EXHIBIT NO. 7: Agreement dated May 25, 1971 and offer to purchase shares of Western Ontario Distributors Limited

MR. HOLLAND: Q. I will give you an extra copy of that. I believe there is a representation in the agreement as to gross sales?

A. Yes.

Q. That was $1,500,000?

A. Yes.

Q. Going back a minute to the purchase price, we have another $239,000 in cash and $125,000 in cash. How was that financing arranged?

A. Through the Toronto-Dominion.

Q. Was it, again, guaranteed by you, your father, Metropolitan Toronto News Company Limited and Pierce News Company Incorporated of St.Louis?

A. Yes, sir.

Q. Was this agreement with Halliley for London contingent upon the purchase of Sarnia, that is, Lambton News Service and TV Carrier Service?

A. Yes.

Q. Why was the one contingent on the other?

A. He wanted to sell out and expressed to me he wanted to retire to the Bahamas and it was strictly talked to me as a one-package company.

Q. It had nothing to do with control of two adjacent geographical areas?

A. No, sir.

Q. Now, then, the closing date of this transaction appears to be June 30th, 1971. Is that correct?

A. Yes, sir.

Q. When was the transaction, in fact, closed?

A. June the 11th.

Q. Again, on the Friday, with the Legislation coming in on the Monday?

A. Again with the same person I

closed it with for Sarnia.

Q. You have given your explanation for the early closing of Sarnia. Is the same explanation correct for the early closing of London?

A. It was the same circumstances.

Q. Is there any other explanation for London, other than the one you have given for Sarnia?

A. No, sir.

Q. Your answer was no?

A. Yes.

Q. I would ask you to look at Exhibit No. 3 and again confirm that the area marked in red for London is the area that was purchased in this agreement?

A. Yes, sir.

Q. Just for the purposes of the record, I am showing you an agreement dated May 22nd, 1971 addressed to Western News Company Limited, William G. Burns and Phillip Birch. This would be for the 40 per cent shareholding interest and you recognize your signature appearing on page 8 of that agreement?

A. Yes.

MR. HOLLAND: May this be the next Exhibit?

THE CHAIRMAN: Exhibit No. 8.

---EXHIBIT NO. 8: Agreement dated May 22, 1971 to Western News Company Limited, William G. Burns and Phillip Birch

THE CHAIRMAN: I wonder if it is required, the closing of this transaction of June 11th, the names of the persons who were present at the closing?

MR. HOLLAND: Perhaps, before we get to that, Mr. Chairman, this agreement with Western News Company Limited, William G. Burns and Phillip Birch, was also due to close or the closing date was June the 30th, 1971.

THE WITNESS: Yes.

MR. HOLLAND: Q. Did this transaction also close on June 11th, 1971?

A. Yes, sir.

Q. You have heard the Chairman's question: Who was present at your solicitor's office at the time of these closings? From what I can see, there were three closings on that date?

A. Yes. Peter Ridout, Bobby McMonigle.

Q. Who is that?

A. General sales manager of Metro News, Mr. Birch and Mr. Burns, with their legal counsel.

Q. Mr. Burns and Mr. Birch?

A. Reg and his legal counsel and two auditors.

Q. That is Reg Halliley?

A. Yes.

Q. With his solicitor?

A. And two auditors. My two bankers.

Q. What do you mean by your two bankers?

A. Toronto-Dominion in Toronto and a Toronto-Dominion branch from London.

Q. You mean a representative from those branches?

A. Yes.

Q. Yes?

A. And John Romanez.

Q. And Mr. Romanez is the manager of the Toronto Dominion News Company?

THE CHAIRMAN: Metro Toronto.

MR. HOLLAND: Q. I am sorry, Metro Toronto.

THE CHAIRMAN: They are in every other business, so they might be in that too! (Laughter)

MR. HOLLAND: Q. If we may turn to Belleville and Upper Canada News Limited, I am showing you an agreement which appears to be dated the 2nd day of March, 1971, between Metro Toronto News Company Limited and Ernest Colbourne, Marguerite Colbourne, Edward R. Colbourne, and Richard E. Colbourne, hereinafter called the shareholders, and Upper Canada News Limited. Can you recognize your rather illegible signature on the last page

of that agreement?

A. That is my father's signature.

Q. Did you sign this document at all?

A. As assistant secretary.

MR. HOLLAND: May this be the next Exhibit?

THE CHAIRMAN: Exhibit No. 9.

---EXHIBIT NO. 9: Agreement dated March 2, 1971 between Metro Toronto News Company Limited and Ernest Colbourne, Marguerite Colbourne, Edward R. Colbourne and Richard E. Colbourne

THE CHAIRMAN: I wonder if we could just clarify one point. This is a document, you say is signed by Metro News Company Limited?

MR. HOLLAND: Yes, per Allan Molasky, President and Mark Molasky, Assistant Secretary.

THE CHAIRMAN: Is Metro Toronto News Company Limited the operating company in the Metro Toronto area, or is it the company which holds one-half of the Metro Toronto News?

MR. HOLLAND: Q. I think you can explain that.

A. It holds one-half of the partnership.

THE CHAIRMAN: So that in this acquisition, the limited partnership which operates

Metro Toronto News, is not, in fact, the partner which is a party to it?

THE WITNESS: Yes.

MR. HOLLAND: Q. It was one of the partners who was acquiring the interest?

A. Yes.

Q. Now, the price here, I believe, was $500,000 cash?

A. Yes, sir.

Q. And how was that financed?

A. Through the Toronto-Dominion Bank.

Q. What were the gross sales?

A. I believe $1,450,000.

Q. Would you now explain the purchase, was the stock in trade purchased in this particular case?

A. I did not buy the stock in the company. We bought the assets, we bought inventories and trucks. We bought the territory.

Q. You bought the territory?

A. This was from Mr. Colbourne and the goodwill. I just gave the cheque to Mr. Colbourne for goodwill.

THE CHAIRMAN: I wonder if the witness will tell us if the witness and his firm bought the franchise, so called, if there are such things?

THE WITNESS: There are no franchises.

MR. HOLLAND: Q. I just want to be clear what the purpose is in this. I understand you did not buy the stock but you purchased the inventory and maybe we are talking the same thing. I don't know.

A. We bought the inventory of goods.

Q. By that you mean you bought the inventory of paperbacks and things like that?

A. Correct.

Q. And you bought the trucks?

A. Correct.

Q. And the geographical area?

A. Correct.

DR. JEANNERET: Mr. Holland, could you find out what is meant by buying the geographical area?

MR. HOLLAND: Q. Mr. Molasky?

A. I think, if you read the contracts, it is really clarified what the geographical area is. It is strictly goodwill to operate in their country.

Q. Mr. Molasky, as a matter of practice, as I understand it, these Ontario geographical wholesalers, in fact, control a very specific geographical area?

A. When you say the word "control", could you clarify?

Q. That they distribute to a very specific geographical area generally without

competition from any other wholesaler?

A. Yes.

MR. CAMP: That is what is meant by territorial rights?

THE CHAIRMAN: We are all asking, in essence, the same question. We are very obviously keen about knowing what you bought when you bought the territorial rights. If we can come to grips with that ---

THE WITNESS: It was strictly that Mr. Colebourne would not compete in that area. That applied to Ernest Colebourne & Sons for a period of five years.

THE CHAIRMAN: Is the witness saying that what is meant by territorial rights is a restrictive covenant given on the part of the vendors that they will not compete in this area? Is that what is meant by territorial rights?

THE WITNESS: Yes, sir

MR. HOLLAND: Q. But, in fact, there would be no other competition in that area?

A. I would not say that. Anyone could come in from Toronto and sell magazines and periodicals, to any one of the accounts I service right now.

Q. If they could get the distributor to go along with them?

A. When you say "go along", I think you are trying to pinpoint something I am not clear on.

Q. We may get to that a bit later, Mr. Molasky. What was the closing date for this transaction?

A. I don't have the contract with me.

Q. I am sorry.

MR. SEDWICK: I must say I couldn't find the closing date but I am told it was closed on the 1st of June.

THE WITNESS: It was closed on the 1st of June.

THE CHAIRMAN: June 15th appears to be the closing date in accordance with Section 3 on page 2. Mr. Holland, I wonder --

MR. HOLLAND: We can try to.

THE CHAIRMAN: I can scarcely see anyone buying accounts receivable on June 15th unless the whole transaction was closed on that date, or very closely after.

MR. HOLLAND: We will perhaps deal with the closing date.

Q. When was this transaction, in fact, closed?

A. June 1st.

Q. 1971?

A. Yes.

Q. And look at page 2, Section 3, which reads in part as follows:

"Metro agrees to purchase from company on June 15th, 1971, all of company's accounts receivable arising from the wholesale sale of magazines, periodicals and paperback books to persons who are customers of the company on such date."

Why was that date inserted there?

A. It was two weeks after closing to give my bookeepers, to give my management, time to

figure out what the accounts receivable were. That was two weeks after the closing on June 1st.

Q. How was the date June 1st arrived at?

A. Mr. Colebourne and I negotiated and we came up with the date of June 1st.

Q. When did you come up with that date?

A. This goes back five or six months.

Q. Well, this agreement is dated, or appears to be dated, March 2nd, 1971. That is written in in ink. Is that the date that the agreement would be signed?

A. This is the date the agreement was signed but the contract was drawn up possibly six weeks earlier.

Q. And at the time the contract was drawn up you had agreed to the closing date of the 1st of June, 1971?

A. Yes.

Q. Then, why wasn't that inserted in the agreement?

A. No reason.

Q. It was inserted in the other agreements, wasn't it?

A. Yes, sir.

Q. Wouldn't you think it would be a pretty important term to insert in an agreement?

A. Well, possibly I could have been

arranging for cash at that point and wanted to have additional time to arrange for financing.

Q. I don't quite follow you.

A. When I talked to Reg and Mr. Birch and Mr. Burns the final thing was all set up. When I talked to Mr. Colebourne I had to arrange financing.

Q. But you talked to Mr. Colebourne back in February or March of 1971?

A. Correct.

Q. And you signed an open-ended agreement with no closing date in it?

A. Correct.

Q. And at that time you had already agreed verbally to a closing date of June 1st, 1971?

A. Correct.

MR. CAMP: Just to get back to the territorial rights question, it says the company has territorial rights as set forth in a schedule attached hereto. Is that schedule attached here?

THE CHAIRMAN: It is either going to be a map or a list, one or the other.

THE WITNESS: It is a map.

MR. CAMP: It is not here, though?

THE WITNESS: No.

MR. HOLLAND: Perhaps we could ask counsel to produce that map if there was a map. It was apparently not delivered to us. No doubt that can be forthcoming following the recess.

Q. Another thing that interested me about this agreement, on page 5 down at the bottom there is a clause headed, "No Adverse Events". I will just read it to you if I may:

"To the knowledge of company there is no threatened or pending suit, action or legal administrative arbitration or other proceedings or governmental investigation against company which might materially adversely affect the operations or the conduct of its wholesale business as set forth in the schedule previously furnished to Metro, except for events and conditions relating to business in general. There is no event or condition of any character pertaining to its wholesale business not to the knowledge or belief of the company which may reasonably be expected to materially adversely affect such business."

That clause was crossed out. Why was that?

A. Because we were not buying his corporation, not stock in the company.

Q. You were not buying the shares of the company?

A. Correct.

Q. And that is the only reason that clause was crossed out?

A. Yes.

MR. SEDGWICK: Mr. Holland, my copy of this agreement has a page missing, page 4, and yours may have too, apparently a mistake on the part of whoever Xeroxed them and page 4 does contain this clause:

"The transfers and exchanges provided for in this agreement shall take place at the office of Metro in Toronto, Canada, the transfer date shall be June 1st, 1971 at 10 a.m. or such other date or other place as the parties may mutually agree upon."

I am sorry my copy had that page missing.

MR. HOLLAND: Then, that little mystery has been cleared up. It was a mistake of some secretary in somebody's office who omitted a page in the copies given us.

THE CHAIRMAN: I wonder if the solution would be, so the record may be complete, if we may have a copy with the missing page?

MR. SEDGWICK: I will get that.

MR. HOLLAND: Q. So, in fact, there was a closing date set out in this agreement which was June 1st, 1971?

A. Correct.

Q. And the transaction did close on the closing date?

A. June 1st, right.

Q. And that clause also permitted an earlier closing if the parties agreed?

A. Yes.

Q. But no earlier closing was arranged in this case?

A. No.

Q. Why was that?

A. For no reason.

Q. Did you come up for this closing?

A. Yes, I was up here that week but I was not here for the actual closing.

Q. You were not here for the closing?

A. No.

Q. You were not here on the 1st of June?

A. No.

Q. I thought you had to be or something to sign the cheque?

A. Not under this contract. I believe John Romanez and Mr. McMonigle were able to sign that cheque as my local representatives and my legal counsel from St. Louis and also Mr. Colebourne's legal counsel was there, so I thought I was fully protected.

Q. Were you not equally protected with Somerset Specialties Limited, the purchaser in the other cases?

A. Mr. Ridout, that was his first closing for this type of company and I just felt I should have been there -- no reason.

Q. I am sorry, the other transactions closed on the 11th?

A. Yes, sir.

Q. This one closed on the 1st?

A. Yes.

Q. You said you thought you should have been here for the 11th closing?

A. Correct.

Q. But not for the first closing?

A. Correct.

Q. And what was the reason you gave for that?

A. It was because Mr. Ridout -- it was a different type of situation. I feel this way, that that is really a prerogative I have in operating the company. If I feel I should be there, I can be there.

Q. There is no doubt about that, Mr. Molasky, but it just seemed a bit of a coincidence that you had to be here for the 11th closing.

A. I never said I had to be. I had the desire to be.

Q. I see. And it was because of that desire that the transaction closed on the Friday

with the legislation on the Monday?

A. Correct.

Q. It was a happy desire?

A. Yes.

MR. SEDWICK: Mr. Chairman, my friend should not put it in that way. The witness said he did not know anything about the Bill until the 14th and the question is not fair to the witness. He said he closed on the 11th with no knowledge whatsoever of either the Interim Report or the intention to implement it by legislation. I don't think the question should be linked with it. It closed on the 11th of June.

THE CHAIRMAN: That is clear. Mr. Holland, we are going to take a break very shortly but in dealing with this document there may be other questions that you may wish to put and certainly Mr. Sedgwick will have his opportunity to reply to these questions if he wishes to do so but I think my colleagues are again interested in this matter of territorial rights.

The witness has already given his evidence that with regard to territorial rights he meant a restrictive convenant given that the vendor would not compete in the area but I would be obliged if you would draw to the witness' attention Exhibit 9 and particularly on page 1 of Exhibit 9, the second recital which says:

" Whereas the company desires

" to sell and Metro desires to acquire all the rights of the company for the wholesale distribution of magazines, periodicals and paperback books hereinafter called territorial rights for the price herein set forth."

Let us come to the question: Was there or was there not attempts to deal here with the exclusive rights to sell certain periodicals in that territory given to the vendor by certain of the distributors of certain magazines? Was not this actually what was being acquired? Is that what was being paid for or not?

THE WITNESS: I did not understand the question. I think you should ask legal counsel.

THE CHAIRMAN: I am not asking legal counsel, I think I should ask you. With your background in the industry I don't know anyone here any more competent to answer that question.

THE WITNESS: I really don't know how to answer it, Mr. Chairman. If you look at the three different contracts with the three different companies, every contract is different. I believe the Lambton News Company contract is completely different from this agreement.

THE CHAIRMAN: Witness, I am asking you about Exhibit 9 and I am asking you about the Upper Canada acquisition of the assets and it is a

document which you signed as an officer of the company in which you acquired certain rights, or which appeared to be acquired, for a very substantial amount of money. If you can't answer the question or don't want to answer, say so.

THE WITNESS: It isn't that I don't want to answer but I can't answer.

THE CHAIRMAN: You can't answer it, all right. Did you examine any of the financial statements of Upper Canada before you acquired the assets from Mr. Colebourne?

THE WITNESS: Yes.

THE CHAIRMAN: And do you have any of these financial statements in your records that you could produce confidentially to the Commission?

THE WITNESS: I only have one for 1969.

THE CHAIRMAN: Can you recall what the net profit was for your company for the year 1969?

THE WITNESS: I feel that this would be confidential.

THE CHAIRMAN: I didn't ask you what it was, do you recall what it was?

THE WITNESS: No.

THE CHAIRMAN: Is it not a matter of concern to you or did you, in fact, take part in the negotiation?

THE WITNESS: Now, I did the negotiation and it was a concern.

THE CHAIRMAN: It was a concern but you don't remember what it was?

THE WITNESS: No.

THE CHAIRMAN: Perhaps your counsel can assist you on this point at the break, but I would be obliged ---

MR. SEDGWICK: I don't think we have it here. We may have it in St.Louis. We are not going to reveal the financial statement in public.

THE CHAIRMAN: Connections with St.Louis are fairly direct, and if you could assist us during the course of these proceedings, on this particular point, it is important.

MR. SEDGWICK: He says he has the statement but he can't remember the figure.

MR. CAMP: The acquisition mentioned in Exhibit 9 here, was that the distribution right for periodicals and magazines?

THE WITNESS: No.

MR. CAMP: So all you had was the territorial rights, whatever they were?

THE WITNESS: Yes.

THE CHAIRMAN: We will adjourn for about fifteen minutes.

---Recess

THE CHAIRMAN: If we can again proceed. Mr. Holland, I think my colleagues and I would like to sort of, again, discuss with this witness, certain aspects that we are interested in about his knowledge in relation to the relationship

between distributors and wholesalers. This is all flowing from the question of so-called territorial rights. I wonder if we might have a moment to confer?

MR. CAMP: You could help us, Mr. Molasky, it is our understanding of this operation how these things operate, the Colbourne family, in your acquisition of their operations, they would have had in that area full representation in paperbacks and magazines? There was nothing you brought to the operation?

THE WITNESS: Yes.

MR. CAMP: They had TV Guide and Cosmopolitan?

THE WITNESS: Correct.

MR. CAMP: They had the territory which you now have, for which they acquired these publications from the distributors?

THE WITNESS: Correct.

MR. CAMP: Do you have the same publications or many of the same publications in your areas that you handle?

THE WITNESS: Correct.

MR. CAMP: Territorial rights. Is it the distributor who decides who will respect the sovereignty, the territorial rights of the wholesaler, or is it the wholesalers who respect the rights of other wholesalers as to their territorial sovereignty?

THE WITNESS: The wholesalers.

MR. CAMP: Among themselves?

THE WITNESS: Right.

MR. CAMP: So even though you, for example, since you have the same publications that you are wholesaling, that they have in the Colbourne family, you would not compete in their territory?

THE WITNESS: Right.

MR. CAMP: This would be voluntarily on your part? This would be your own voluntary action?

THE WITNESS: Right.

MR. CAMP: Are there any examples that you know of -- I won't ask you in North America because that is too big a ball park -- where two wholesalers will try and compete in the same area with the same publications?

THE WITNESS: On a full-line basis?

MR. CAMP: Full or partial?

THE WITNESS: I believe there are two wholesalers in Hamilton City.

MR. CAMP: There are two wholesalers with the same line,each of them having certain publications in common?

THE WITNESS: Correct.

MR. CAMP: So, in essence, is it a gentlemen's agreement among wholesalers as to territorial rights?

THE WITNESS: I guess it was long

before my time that it began.

MR. CAMP: It is long-standing, more or less. The distributor knows these conditions when he extends these lines to the wholesaler?

THE WITNESS: Correct.

MR. CAMP: The Rottman family are all Americans?

THE WITNESS: Now. Milton Rottman's one brother is a Canadian. He used to live in Montreal.

MR. CAMP: They now all live in Connecticut?

THE WITNESS: I believe Joe Rottman now lives in Montreal.

MR. CAMP: They own half of Metro News?

THE WITNESS: Correct.

MR. CAMP: Prior to your purchasing the other half?

THE WITNESS: Correct.

MR. CAMP: When you purchased the other half, did you make any offer to them to buy their interest?

THE WITNESS: I believe there was an offer made approximately twelve months after our purchase.

MR. CAMP: I take it the answer is no?

THE WITNESS: Yes.

MR. CAMP: You have a partnership in which you have a managerial authority?

THE WITNESS: Right.

MR. CAMP: In the London example, was there any agreement in the sale, the purchase of the 60 per cent, that you must also purchase the 40 per cent?

THE WITNESS: Yes.

MR. CAMP: There was an agreement?

THE WITNESS: Yes. I would like -- Mr. Ridout could explain the legal implications.

MR. CAMP: You have no objection to minority shareholders?

THE WITNESS: No.

DR. JEANNERET: I have two or three questions I would like to ask after counsel has concluded. I want to see where it is going.

THE CHAIRMAN: Just following along the answers that you gave, if it is the wholesalers who decide among themselves with respect to respecting each other's territory in terms of gentlemen's agreements or otherwise, did you have any gentleman's agreement with the Colbourne family in Belleville at any time?

THE WITNESS: No.

THE CHAIRMAN: Well, then, what would have prevented you from going in to compete against the Colbournes in Belleville without buying them?

THE WITNESS: It is kind of a

ticklish situation. Let me say this: Mr. Colbourne and Metro Toronto News Company was managed by Terry Cosgrove at that time and by Mr. O'Brien's father in Peterborough, and they worked this out among themselves. There was a discussion, a disagreement.

THE CHAIRMAN: I take it, with regard to Kitchener, which I understand you recently -- Metropolitan News -- Metro Toronto News, started to go into the Kitchener market with the TV Guide?

THE WITNESS: And MacFadden-Bartell.

THE CHAIRMAN: What did the Kitchener News people think about that?

THE WITNESS: Well ---

THE CHAIRMAN: What did the Kitchener News people think of that situation if there was this so-called respecting of territories? Did you go in with or without their consent?

THE WITNESS: We never discussed it with them.

THE CHAIRMAN: You were prepared to compete with them in their own markets?

THE WITNESS: The same way they could compete in my market.

THE CHAIRMAN: They could be in your market?

THE WITNESS: Right.

THE CHAIRMAN: We will come back to that question probably a little later on.

MR. CAMP: They weren't, though?

THE WITNESS: No.

THE CHAIRMAN: In the Kitchener market, with regard to TV Guide, was it not the decision of Triangle that TV Guide would be removed from the Kitchener organization?

THE WITNESS: Yes.

THE CHAIRMAN: It was?

THE WITNESS: Yes.

THE CHAIRMAN: Was it an instance where the decision as to who is to take distribution or, rather, the wholesaling, is made by the distributor rather than the wholesaler?

THE WITNESS: Correct.

THE CHAIRMAN: It happens from time to time?

THE WITNESS: Correct.

THE CHAIRMAN: This is an instance where it did?

THE WITNESS: Correct.

THE CHAIRMAN: And is it not the position, generally, among distributors that they will determine whether or not a wholesaler will receive their periodicals?

THE WITNESS: Correct.

THE CHAIRMAN: So they take unto themselves the opportunity of saying who will, in fact, serve the Kitchener area or serve the Metropolitan Toronto area, or the Belleville area, is that not right?

THE WITNESS: Correct.

MR. CAMP: The way I understood it, what you are now saying, Mr. Molasky, it isn't so much the wholesalers who respect each other's territories to some degree, but the distributors themselves who do or do not respect the wholesalers' territories?

THE WITNESS: A distributor, from what I understand, has a right to distribute their merchandise to whoever they want.

MR. CAMP: Of course, of course.

THE WITNESS: All I can do is get as many distributors to distribute to our company ---

MR. CAMP: The distributor can get his publications from any wholesaler at any time?

THE WITNESS: Correct.

MR. CAMP: Does that happen very often?

THE WITNESS: It has happened on several occasions.

DR. JEANNERET: In that case ---

MR. CAMP: Where?

THE WITNESS: In Canada and the United States.

MR. CAMP: We have an example the Chairman made. Do we have one example in Canada you know of?

THE WITNESS: Yes, I can tell you

of one example.

DR. JEANNERET: This being so, following on Mr. Camp's question, when a territory is purchased and only the territory, setting aside any physical assets even possibly some real estate, or trucks, I am not clear any more than I was a little while ago exactly what is purchased without the distributor's acquiescence. I am not clear what you are paying your money for,

THE WITNESS: Strictly buying the accounts serviced by the previous owners, buying accounts receivable, their records and hope, after I buy this, that I will be their distributor for the 13 or 14, or however many geographical distributors there are.

DR. JEANNERET: Your purchase figure, obviously, is many times accounts receivable, for example, and therefore, you are going on the assumption that you will continue to enjoy, or you will enjoy, you will obtain the acquiescence of the distributors in that market?

THE WITNESS: Correct.

DR. JEANNERET: There is no assurance that can be given you by the vendor?

THE WITNESS: No.

DR. JEANNERET: It is a large price to pay for such a risk if the pattern is not very clearly established, it seems to me. What about prior assurance on the part of the distributor the North American distributors, before

you make the purchase down here?

THE WITNESS: I have notified what, I say, everyone, about 90 per cent of them, before I make any decision. They were notified in Sarnia and London, the distributors.

MR. CAMP: Of your intention?

THE WITNESS: No, of the agreement that was agreed upon and I asked if I could still be their distributor.

THE CHAIRMAN: In Belleville is there any condition in the agreement which provides that the distributors shall have consented to this sale before you go through with it?

THE WITNESS: No.

DR. JEANNERET: Well, with the acquiescence of the distributors, then, it would be possible, presumably, for any wholesaler to expand into adjacent territories?

THE WITNESS: Correct.

DR. JEANNERET: And there would be no defence possible if the distributors supported this expansion, there would be no defence available to the wholesalers in those adjacent territories: they would presumably lose their rights to distribute at the same time that the expanding wholesaler gained the right to distribute?

THE WITNESS: Let me say this, I have never heard of a wholesaler losing a distributorship except in the example of a sale, not paying your bills or doing a terrible job, and that sort of thing.

DR. JEANNERET: The distributors are not locked into these contracts of sale?

THE WITNESS: No, there are no contracts with them.

MR. HOLLAND: Q. Mr. Molasky, as I understand your evidence then, in Ontario at any rate, there are a number of geographical monopolies operated by these wholesalers?

A. The service company servicing the territory, yes.

Q. And looking at the last exhibit, that is the Belleville exhibit, you really purchased three things: you purchased what you call the

territorial rights, you purchased the accounts receivable and you purchased the inventory for a maximum price of $5,000?

A. No, the $5,000 was non-returnable inventory. Inventory could go up to any number.

Q. And you paid for this package $500,000?

A. Correct.

MR. CAMP: Goodwill was mentioned.

MR. HOLLAND: Q. That, I think, was a reference to territorial rights?

A. Yes.

THE CHAIRMAN: What kind of purchase is the witness now speaking about for $5,000?

MR. HOLLAND: Q. Mr. Molasky, I have asked your counsel to provide for the Commission a breakdown if they can, dividing the inventory which was purchased and showing the actual price for that purchase and the accounts receivable that were paid for it and I assume if we can get those figures and deduct them from half a million dollars, we will come up with the value placed upon the territorial rights. Would that be correct, Mr. Molasky?

MR. SEDGWICK: I believe it is in addition.

MR. HOLLAND: Q. So, it is a half million dollars for the territory?

A. Yes.

Q. Plus the inventory, plus the accounts receivable?

A. Right.

Q. And then, as I understand your evidence, you have no guarantee and this agreement was not contingent upon getting the consent of the North American distributors to this sale?

A. Correct.

Q. And, in fact, you did not apply for any consent until after the agreement had been signed?

A. I notified the North American distributors prior to the signing of the contract.

Q. You did, by letter?

A. By phone and by person.

Q. In person?

A. Yes.

Q. Not by letter?

A. No.

Q. So, there would be no correspondence dealing with this?

A. No.

THE CHAIRMAN: Was this by personal call or not?

THE WITNESS: Depending on what actual distributors I could meet.

THE CHAIRMAN: Would you ask the witness, Mr. Holland, about the primary one which was Triangle?

MR. HOLLAND: Q. In this particular

case, Belleville we are dealing with, did you communicate in person or by telephone with all 13 of the North American distributors?

A. I can't say all of them but the majority of them, yes.

Q. Did you communicate with Triangle Publications?

A. Yes.

Q. With whom did you communicate at Triangle Publishing?

A. Mr. David Lichtenberg.

Q. And where does he reside?

A. In Pennsylvania.

Q. Is he in town today?

A. Yes.

Q. You have seen him here today?

A. Yes.

Q. You spoke to him, then, before this was signed to get his consent?

A. Not consent, I asked him, if I bought this territory if I could still be the distributor for Triangle Publications.

Q. And Triangle Publications includes TV Guide and Seventeen Magazine?

A. Yes.

Q. Is TV Guide the prime seller, would you say?

A. TV Guide, yes, it is a prime seller.

THE CHAIRMAN: What would have happened

if Mr. Lichtenberg in his wisdom had said no?

THE WITNESS: Well, at that time it would have been my choice to close the contract or buy it without Triangle Publications or walk away from the deal.

MR. CAMP: I think you are confusing me again, Mr. Molasky. I had understood you to say that the distributor was not really concerned with your territory; either you had his publication or you didn't have it.

THE WITNESS: Yes.

MR. CAMP: If you have it in Toronto you have it for all intents and purposes and you can put it anywhere you like?

THE WITNESS: This had strictly to do with the Belleville territory.

MR. CAMP: But you said that was a gentleman's agreement among wholesalers. Now you tell me that you canvass the distributors first to make sure that it is all right with them which indicates, as a matter of fact, it is not a gentlemen's agreement among wholesalers: it is a matter of an agreement between the distributor and the wholesaler because you went on to tell us and said to Mr. Holland, that had Triangle said no, that they would discontinue supplying the TV Guide you then had a brand new situation that you would have to consider on its merits.

THE WITNESS: Yes. Most of the wholesale business in the magazine trade was written

a long time prior to Mark Molasky or people in our company now. I believe it is just a courtesy to follow some of the rules. It has been known if you buy a new territory, you notify the distributors. It is strictly a matter of formal ethics.

MR. CAMP: But would it not also be the case that it would be useful information to the distributor because someone else may ask him to distribute their publication?

THE WITNESS: Yes.

MR. CAMP: They very seldom do. Who decides that?

THE WITNESS: Strictly the national distributor.

MR. CAMP: I am trying to understand what the rules are but they keep changing as you keep talking.

THE WITNESS: Well, it goes back and forth. There are really no written laws or rules.

DR. JEANNERET: One of the rules thatwas strongly implied, I think, is that I think a distributor with respect to a given geographical area will only deal with one wholesaler?

THE WITNESS: Yes.

DR. JEANNERET: That is very important.

THE CHAIRMAN: Well, for whatever reason, that is the point?

THE WITNESS: Right.

MR. HOLLAND: Q. Then, if I may get back briefly to Triangle Publications in Belleville, you told us that you spoke to the gentleman from Triangle Publications before you signed this agreement dated the 2nd of March, 1971?

A. Correct.

Q. Did you write him a letter dated April 26th, 1971, asking that he deal with you since you had taken over the business?

A. I don't remember a letter but I do remember writing a notice that we were taking over the distribution of Belleville, Peterborough.

Q. Perhaps Mr. Romanez would be able to find a copy of that letter. He is your manager, I think?

A. Correct.

Q. That could be looked for?

A. Yes.

THE CHAIRMAN: Just one second, Mr. Holland. I understand Mr. Romanez is the manager of the Metro Toronto News. Mr. Romanez is not the manager of the Metro Toronto News Company Limited, or is he?

THE WITNESS: No, he is not.

THE CHAIRMAN: We are now dealing with a situation where this transaction is taken by Metro Toronto News Limited. I want to know if Mr. Romanez has any connection with the Belleville

operation or Metr Toronto News Limited and if so, in what capacity?

THE WITNESS: He has no capacity with Metro Toronto News Limited. He has a connection with Metro Toronto News Company.

THE CHAIRMAN: What about Belleville?

THE WITNESS: He has a connection with Belleville.

THE CHAIRMAN: Is he paid by the Metro Toronto News Company?

THE WITNESS: Yes.

THE CHAIRMAN: Is he paid by Metro Toronto News Company Limited?

THE WITNESS: It is only Metro Toronto News Company, not Metro Toronto News Limited and he is paid for his services. It is up to him to handle these services.

THE CHAIRMAN: Do we take it then that the Belleville operation is now serviced out of the municipality of Metropolitan Toronto by Metro Toronto News Company?

THE WITNESS: Correct.

THE CHAIRMAN: Under a service contract?

THE WITNESS: Correct.

THE CHAIRMAN: Whose vehicles carry the goods out for distribution?

THE WITNESS: Metro Toronto News Company.

DR. JEANNERET: Mr. Chairman, it would

help if we could see the agreement between Metro Toronto News Company and Metro Toronto News Company Limited regarding servicing arrangements.

THE CHAIRMAN: Is there one?

DR. JEANNERET: Mr. Molasky just testified that there is.

THE WITNESS: May I talk to my counsel, please?

THE CHAIRMAN: Would you make a note then to file that agreement, Mr. Sedgwick? If you will review the matter among yourselves in due course and if there is such an agreement-- otherwise would you let us know in writing what the understanding is of the arrangement?

MR. HOLLAND: Q. Following along from the questions asked by the Chairman, Mr. Molasky, you have indicated that the Belleville area is presently being serviced by the Metropolitan Toronto area?

A. Correct.

Q. I am looking at a newspaper, a Belleville newspaper, of Tuesday, June 8th, 1971 and the article reads in part as follows:

" With terimination of Belleville operations on June 15, only 7 of the 40 employees will be kept on by the purchasing firm. With this reduced staff handling deliveries and service to Belleville, Peterborough and area".

Was there, in fact, a change in the staff arrangements?

A. Correct but this staff was also added to Metro Toronto News Company.

THE CHAIRMAN: Before we move away from Belleville, Belleville is very attractive today. I wonder if Mr. Molasky could give us the formula, if there is one, which he used in arriving at a figure of $500,000 as the price for the territorial rights? Is there a formula which you used in purchasing this?

THE WITNESS: There is really no formula. Mr. Colebourne and I sat down and he asked a certain price, I offered a certain price, it was negotiated and came out at $500,000.

MR. CAMP: There would be limits as to what you would be willing to pay and what he would be willing to settle for?

THE WITNESS: That is correct.

MR. CAMP: Would this be sort of a ball park figure, let us say, as a percentage of his gross?

THE WITNESS: Not a percentage of his gross.

MR. CAMP: But I mean of sales?

THE WITNESS: Of sales, yes.

DR. JEANNERET: Any known posture on the part of the distributors would have a tremendous bearing on the likelihood of the sale being consummated at any given figure, isn't that so? I don't know if my question is clear.

THE WITNESS: I don't know if I understand your question. I think every situation is treated separately. There are companies in our type of business which are losing money every year. If they are making half a million dollars, they are worth half a million dollars.

DR. JEANNERET: You would probably enter into the negotiation well confident in the knowledge that the distributors were behind you and that you were eventually then going to take over if the settlement went through?

THE WITNESS: I would have to assume that.

DR. JEANNERET: But before you enter into negotiations to purchase another wholesale organization you would have been in touch with the key distributors and you would know that you, in effect, had their support in this purchase?

THE WITNESS: Yes, that is true.

THE WITNESS: That is not true.

DR. JEANNERET: I misundertstood what you said earlier.

THE WITNESS: I notified the distributors after I satisfied my own mind that it can be worked out between the sellers and the others. I then notify the distributors.

DR. JEANNERET: I am sorry. I am sorry, it is my fault, but you explained earlier, you testified earlier that you were in touch with the distributors in advance of making a purchase?

THE WITNESS: No.

DR. JEANNERET: Before you close?

THE CHAIRMAN: Before you sign the document, that is one event, and the other event is closing. When is it you notify?

THE WITNESS: Prior to the signing of the contract. Then a formal notice afterwards.

DR. JEANNERET: In other words, you would be negotiating the terms of the contract of sale in the knowledge that the distributors supported you?

THE WITNESS: Right.

DR. JEANNERET: This would, presumably, give you a good deal of strength in the negotiations?

THE WITNESS: No. I think that is an unfair statement. It is just a matter of two men shaking hands and agreeing on the purchase

price.

MR. CAMP: You can't help me any further with regard to how you estimate the value of a territory? It seems to me your friends in London got a better price for their operation -- Belleville got a better price than they did in London, in regard to the cash purchase as against the gross sales?

THE WITNESS: From what I saw in London, London's statements showed a loss on gross sales. They showed a loss in net profit. That would have some bearing on the purchase price as well.

MR. CAMP: That would be management that you could improve?

THE WITNESS: That is why we acquired the company.

MR. CAMP: You must have looked at the gross sales?

THE WITNESS: Right.

THE CHAIRMAN: Gross sales are your key, are they not, in your decision to acquire?

THE WITNESS: Gross sales. My grandfather started this business and my father is still active in the company ---

THE CHAIRMAN: Mr. Sedgwick said your great grandfather.

THE WITNESS: My grandfather.

MR. SEDGWICK: I missed a generation.

THE WITNESS: In 60 years, I think, in this business, we could probably operate the fullest,most economic way. We have our formulae and we have our business established on the type of business.

DR. JEANNERET: I think the Chairman has made a good point and you have too, Mr. Molasky, in the sense that you are a very homogeneous kind of business. You know what is the cost in your business and you know the gross and you pretty well know what you can hope to earn, or net, in that area. It is not going to be very much different from operating somewhere else.

THE WITNESS: Correct.

MR. CAMP: In all of your Canadian operations, I take it that, with the exception of Metro News, all these operations you run are wholly-owned by your own family?

THE WITNESS: Yes.

MR. CAMP: You don't have any American minority shareholders?

THE WITNESS: No.

MR. CAMP: Is that similar to your operations in the United States?

THE WITNESS: Yes, the same relationship in the United States.

MR. CAMP: Though you have no objection to minority shareholders buying in?

THE WITNESS: No.

MR. CAMP: That is not one of your principles that has emerged in 60 years of doing business?

THE WITNESS: No.

MR. CAMP: You wouldn't want to be a minority shareholder?

THE WITNESS: No.

THE CHAIRMAN: That is like being in the opposition! (Laughter)

MR. CAMP: Or worse!

MR. HOLLAND: Q. We have dealt to some extent with Metro and London and Sarnia and Belleville, and I now want to move on a little bit. There was an article that appeared in the Toronto Daily Star on Tuesday, June 15, 1971, that purported to quote you. I will read part of the article to you:

> "In St.Louis Mark Molasky, President of Metro Toronto News Co. said he was 'shocked' by reference to a threatened 'monopoly'. 'We have no plans, no negotiations with anyone else in Canada. We don't have the hundreds of millions of dollars assets to carry out a large-scale takeover', he said."

Now, were you correctly quoted? Do you remember what you did say?

A. As I remember, the only thing I did say was that, he asked why they would

impute this motive to Metro and I said I didn't understand it. We did not have hundreds of millions of dollars to take over the territory when they so stated.

MR. CAMP: Who was "they"?

THE WITNESS: Newspapers. I think there were prior newspaper articles on this.

THE CHAIRMAN: I understand the Metro Toronto News Company has not been involved in anything like that.

MR. HOLLAND: No.

THE CHAIRMAN: It is Metro Toronto News Company Limited and Somerset.

MR. HOLLAND: Q. In any event, Mr. Molasky, did you, in fact, have negotiations to purchase any other geographical areas other than Metro Toronto, which you have told us about, London, Sarnia and Belleville?

A. What do you mean when you say "negotiations"?

Q. Any discussion with any of the owners of any of those areas, other than the four I have named?

A. Yes.

Q. Did you have any discussions, to be specific, with Cornwall Distributors Limited?

A. No. A phone call.

Q. Was that with a Mr. Bryan?

A. Correct.

Q. He owned or controlled Cornwall

News Limited, as I understand, Cornwall News Distributors Limited, Cornwall. That is the green area shown on Exhibit 3.

A. Correct.

Q. Did you initiate that phone call?

A. I did.

Q. Did you indicate to him in that phone call that you or the Molasky group, was interested in purchasing Cornwall News?

A. Yes.

Q. And did you have a second telephone call with him about six months ago? I suggest the first call was about a year ago.

A. I believe yes.

Q. And did you have a second telephone call about six months ago?

A. I really don't remember.

Q. Did you make him a cash offer for the business?

A. There was no price set.

Q. Did you tell him that you were prepared to pay Bryan 5 per cent more than any offer he might receive?

A. Absolutely no.

THE CHAIRMAN: Absolutely no.

MR. HOLLAND: Q. Did you indicate to Mr. Bryan in a telephone call, or telephone calls, that should he not sell to you or your group,

you would take over the adjacent territory and infringe on the Cornwall News territory?

A. Absolutely not.

THE CHAIRMAN: I take it, Mr. Holland, you are going to call evidence on this point?

MR. HOLLAND: I hope so. I hope Mr. Bryan will be available to give it.

MR. CAMP: Perhaps you could ask the witness what he did tell him.

MR. HOLLAND: Q. What did you say to Mr. Bryan in the telephone call you remember?

A. I introduced myself and asked him if he would be interested in selling out. I told him if he was, I would be happy to negotiate a price.

MR. CAMP: Was that the first phone call in 1970 or the second?

THE WITNESS: I don't remember the second phone call.

DR. JEANNERET: You said you were prepared -- I am sorry.

MR. CAMP: I don't mind being interrupted, but I would like you to finish.

THE WITNESS: I said we could negotiate and if it was agreed upon, we would give him a fair price.

MR. CAMP: What do you recall he said?

THE WITNESS: "Whenever you are ready, come up."

MR. CAMP: This was in 1970, I take it? You said you would go?

THE WITNESS: Yes.

THE CHAIRMAN: When do you think it was?

THE WITNESS: I think it was two or three months prior to Belleville.

MR. CAMP: This would be the first of the year?

THE WITNESS: Yes.

MR. CAMP: This would be March in Belleville, or June?

THE WITNESS: I would say January of 1971.

MR. HOLLAND: Q. Following along on that, did you come up to see Mr. Bryan?

A. No.

Q. Why not, if you had initiated the telephone call?

A. We decided at that point we were not interested in buying Cornwall.

Q. Who do you mean by "we"?

A. The members of Pierce News Company and general management up in Toronto.

Q. Whose decision was it for you to make this first telephone call?

A. My own.

Q. Without prior consultation with other members of your family?

A. Yes.

Q. Why did you decide you were not interested in buying Cornwall?

A. First of all, there was another distinct type of operation with separate management and we had management problems in Toronto in January. It would increase the management problems. This territory was going downhill on the Quebec border. I just made the decision. It was purely an economic decision not to buy it.

DR. JEANNERET: The proposal to purchase, of course, you were quite serious, you intended to purchase, if the price could be negotiated?

THE WITNESS: Yes.

DR. JEANNERET: Presumably, according to the pattern you have mentioned, you must have already been in touch with the distributors concerned, so that you knew that they were behind you?

THE WITNESS: No.

DR. JEANNERET: You were not in this case?

THE WITNESS: No.

DR. JEANNERET: You would be before you confirmed your offer?

THE WITNESS: If Mr. Bryan agreed to the purchase price and I agreed with the price, then I would go to the distributors.

DR. JEANNERET: You would commit yourself to the purchase of a wholesaler without

having an agreement with the distributors?

THE WITNESS: Yes.

THE CHAIRMAN: He said it was on a hand-shake basis and now we are going back another step. We are going from the time of signing the agreement to the time when you have a gentlemen's -- hand-shake.

THE WITNESS: I would say a handshake is still -- I never anticipated any problems. A hand-shake still is not a contract.

THE CHAIRMAN: It still is not a contract.

MR. CAMP: You didn't even know when you made the offer?

THE WITNESS: We did not discuss it.

THE CHAIRMAN: It has to be written to buy it, but this was based on no knowledge of the value of the territory?

THE WITNESS: No.

MR. CAMP: You were just interested in picking it up.

THE CHAIRMAN: Before we leave this, if this is going to be the pattern like you say, we will go after this, if you will bear with us. I was interested in your remark that before you called Mr. Bryan you had no prior consultation with anyone in your own firm?

THE WITNESS: Correct.

THE CHAIRMAN: Is this a general practice? If you decide you want to acquire something on account of your over-all organization and business in Canada that you don't check with your father or anyone else before you do it?

THE WITNESS: No.

THE CHAIRMAN: You don't?

THE WITNESS: No.

THE CHAIRMAN: How long have you been undertaking this proceeding?

THE WITNESS: Since I became President at the early part of this year.

THE CHAIRMAN: Is there any significance to the fact that your father, in fact, signed as President in relation to this particular transaction?

THE WITNESS: My father had enough faith and gave me enough responsibility so that I would do the job. This wholesale operation is not our complete portfolio.

THE CHAIRMAN: Are any of those other areas in Canada?

THE WITNESS: Yes.

MR. HOLLAND: Q. Then, Mr. Molasky, if I may move to Chatham, I understand that your father, Allan Molasky, telephoned Mr. Vaughan at Kent News Service in Chatham in May of 1971 concerning an offer to purchase Kent News Service of Chatham. Do you have any information concerning that?

A. Yes, I made the phone call after the signing of the contract with Reg Halliley.

Q. Just to refresh our minds Reg Halliley was selling out his interest in London and his interest in Sarnia?

A. The contract was signed.

Q. You then communicated with Mr. Vaughan of Kent News Service of Chatham?

A. Right. My father did discuss purchasing Chatham approximately a year and a half prior with Mr. Jak Geller.

Q. That was in Hamilton, I think.

A. Jake Geller was selling his business in Windsor, Ontario. I flew up with my dad and our General Manager and we sat down with Mr. Geller and discussed the purchase price. The only way that we could economically structure to pay Mr. Geller the price he wanted was to acquire Chatham as a separate and distinct operation in the southern tip of Ontario. The purchase price was not agreed upon between Mr. Geller and my father. The purchase price was not agreed upon in Chatham and

we decided to let it go and I believe it was sold to another person.

MR. CAMP: Where did they reside?

THE WITNESS: In Windsor, Ontario.

MR. CAMP: How long ago?

THE WITNESS: About a year ago. It was completely contingent upon us being able to buy Windosr, our buying in Chatham.

MR. HOLLAND: Q. I understand that after the Windsor deal fell through you again approached the owner in Chatham in May of this year?

A. After I signed a contract with London.

Q. Because that would have given you the adjacent geographical territory, is that right?

A. Correct.

Q. Now, let us turn to Kingston. That is Churchill News Services, I believe?

A. Correct.

Q. Did you telephone Mr. Churchill in March of 1971 concerning the purchase of the territory of Churchill News Limited in the Kingston area?

A. Yes.

Q. Did you tell him you were interested in purchasing the business?

A. Yes.

Q. Did you ask for a price?

A. He told me he was interested

in selling and asked me what my offer was. The first thing I told him was that it comes to approximately 30 per cent of gross volume.

Q. Did you telephone Mr. Churchill again on the 1st of May, 1971?

A. Yes.

DR. JEANNERET: 30 per cent of gross sales would be the probable purchase range?

THE WITNESS: Well, that is what I offered, yes.

MR. HOLLAND: Q. So, you only had the one telephone conversation with Mr. Churchill?

A. No, I had another phone call with Mr. Churchill.

Q. When was that last telephone call?

A. Oh, about a month and a half ago, I guess. I don't remember the date.

Q. I am just suggesting it was on the 1st of May, 1971?

A. Yes.

Q. And what was said in that second telephone conversation?

A. Mr. Churchill expressed an interest, said he was going to Europe for a month and that when he came back he would contact me.

Q. And were you interested in purchasing Churchill News Limited in Kingston geographical area?

A. At the right price, yes.

Q. Now then, let us move to Hamilton. And Mountain City News Company Limited which I believe was owned or controlled by Mr. Fred O'Brien. Is that correct?

A. Right.

Q. Did a Mr. Leslie Flegel-- first I suppose we should identify him. Who is Mr. Flegel?

A. He is an employee of Pierce News Company, Inc.

Q. And he is resident in St. Louis?

A. Yes.

Q. And in June, 1971, to your knowledge, did Mr. Flegel telephone from St. Louis to Fred O'Brien in Hamilton concerning the purchase of Mountain City News Company Limited?

A. Mr. Flegel came back to St. Louis after having a sales meeting with a group of Canadian wholesalers, the President of P.B.M.I. which is a wholesaler organization in the United States and came back to St. Louis and said that Mr. O'Brien throughout his statement, that he took it to be that Mr. O'Brien wanted to sell out to us. He then made a phone call and he asked Mr. O'Brien if he was serious, if he really wanted to sell out. Mr. O'Brien said yes. Mr. Flegel said, "Mark Molasky and I are coming up to Toronto next week. Would it be okay to have a meeting?" He said, "Sure".

Q. And did you, in fact, come up to Hamilton with Mr. Flegel?

A. Yes.

Q. And when was that?

A. I would have to ask Mr. Flegel. I don't really remember.

Q. Mr. Flegel is here, is he?

A. Yes.

Q. And can you tell us approximately when that would be?

A. I remember you had ten inches of snow.

Q. That often happens. It would be --

A. I believe it was right after the signing of Belleville and Peterborough.

Q. Were you up here for the signing of Belleville?

A. No.

Q. Well, Belleville was signed on the 2nd of March, 1971?

A. I signed it in St. Louis. It was mailed down.

Q. You think it was right after the 2nd of March that you came up to Hamilton?

A. Yes.

Q. With Mr. Flegel and you met Mr. O'Brien?

A. Yes.

Q. And then you had some discussions

with him in Hamilton, did you?

A. Correct.

Q. And you discussed the purchase of his geographical area?

A. I discussed that we were interested. He took us around and showed us his book operation and he had some other partners in his wholesale operation. He then took us into his office, pulled out a recent statement and said, "The price I want is $800,000 cash. That is the ten times multiple, here is the figure here, $80,000 net cash."

Q. And what did you and Mr. Flegel have to say about that?

A. We told Mr. O'Brien he was in the ball park that when he was ready to sit down and discuss a purchase price we were willing to sit down at the same time. He then replied to me that he wanted to discuss this with his father and ask his blessing on selling his business. That is all that was discussed.

Q. What happened following that?

A. Either we called Mr. O'Brien or Mr. O'Brien called us a week after he got back from Florida and expressed this time that he was not interested in selling out at this time.

Q. Did he indicate he might be interested at some future time?

A. Yes, he did.

Q. Then, let us move from Hamilton

to Kitchener. Did you on April 21st, 1971, telephone from St. Louis to Mr. Harold Hill of Kitchener?

A. Yes.

Q. And I believe at one time Mr. Harold Hill and his son owned Kitchener News?

A. Yes.

Q. And when you telephoned on April 21st, 1971, did you advise Mr. Hill that you were interested in buying Kitchener News?

A. Yes.

Q. What were you told?

A. I was told that they had a contract that was closing in one week.

Q. You were told that he had sold, is that right?

A. No, I was told he had a contract.

Q. A contract for sale?

A. Yes.

Q. And he was closing in one week?

A. Yes.

Q. When you telephoned Mr. Hill, did you already know about that contract for sale?

A. Hearsay.

Q. What do you mean by that -- someone had told you about it?

A. John Romanez called me up and told me that he understood Kitchener was being sold.

Q. And John Romanez is the Manager of Metro Toronto News Company?

A. Right.

Q. And did this prompt your telephone call to Mr. Hill?

A. Yes.

Q. And had you also been told the names of the purchasers?

A. At that time no, only that Terry Cosgrove was part of the ownership.

Q. And he at one time had been your Manager of Metro Toronto News Company?

A. Right.

Q. And when had he left your employ at Metro Toronto News Company?

A. In January of 1971.

Q. And you then knew when you telephoned Mr. Hill that he was one of the purchasers of Kitchener News?

A. Correct.

Q. Did you tell Mr. Hill that you would give him the same deal but pay him more money?

A. Yes, my exact words were I believe that I would pay$50,000 more and "I don't care what price they have offered to pay, I will pay you $50,000 more. I don't care what price, I am willing to pay you $50,000 more".

Q. Did you know at that time what he had been offered?

A. No.

Q. So, you made an offer on the

telephone for $50,000 more than a figure you didn't even know?

A. Correct.

Q. And what did he say?

A. He said, "Thank you very much, Mark, if something falls through I will contact you back."

Q. Did you call him back the same day?

A. I called him back -- no, a day later.

Q. You called him back a day later?

A. Yes.

Q. Did you initiate that second telephone call?

A. Yes.

Q. What was said?

A. I asked if he had closed down or was planning definitely to close. He expressed to me he was closing with the men and at that time he told me who the men were.

Q. And what names did he give you?

A. Terry Cosgrove and group, people backing him.

Q. Did he give you the names of those people?

A. No. Brian Bramall and group, Fred O'Brien.

Q. Just a moment. Did you know who Brian Bramall was?

A. Yes.

Q. Who was Brian Bramall?

A. He was a wholesaler in Vancouver.

Q. Who else did he say?

A. Fred O'Brien.

Q. That is Fred O'Brien from Hamilton

News?

A. Hamilton, yes.

Q. That is Mountain City News Company in Hamilton?

A. Yes.

Q. Who else?

A. Gordon and Gotch Limited.

Q. That is the second name on that list of distributors there, I believe?

A. Correct.

Q. That was then a distributor?

A. Right.

Q. Who else?

A. Bill Smith, Managing Director of Gordon and Gotch in the United States.

Q. Then did you have any further negotiations concerning Kitchener prior to the 10th of June,1971?

A. No.

Q. Were you at the Inn on the Park in Toronto on the 10th of June, 1971?

A. Correct. The 10th of June was a luncheon.

Q. It was a luncheon?

A. Yes.

Q. Did you have some sort of a hospitality suite, or something like that?

A. Just my own room.

Q. Did a meeting take place in your room on the afternoon of the 10th of June, 1971,

at which you were present along with Mr. Flegel, Mr. Romanez, Mr. Fred O'Brien, Mr. Bob McMonigle, and Mr. Brian Bramall?

A. And Jim Grubb as well.

Q. All of these people I have mentioned were present in your room at this meeting?

A. Correct.

Q. Was this a meeting to discuss the possible acquisition of the Kitchener geographical area by the Molasky interests?

A. It was more or less a meeting to determine where we all stood. There were no offers made to buy the Kitchener territory.

Q. All right. We will just deal with what was said in a minute. I understand that Triangle publications, one of the North American distributors, following this sale to this group that you have mentioned in Kitchener, cut off their distribution to the publications handled by Triangle publications?

A. All I know is that Triangle asked me to be their distributor in Kitchener.

Q. But if Triangle had asked you to be their distributor in Kitchener, the distribution could hardly be handled by the Kitchener group that purchased from Mr. Hill, is that not right?

A. Yes.

Q. At the time of this meeting on June 10th at the Inn-on-the-Park, had you

already made the arrangements with Triangle whereby you would take over the Kitchener area for Triangle?

A. I believe it was already started the first week of June.

Q. So the answer is yes, you had?

A. Yes.

Q. Now, as I understand it, Triangle handle a number of publications and their two main ones are TV Guide and Seventeen Magazine?

A. Correct.

Q. Would you just explain to us, if you can, the importance of having the wholesaling rights to TV Guide?

A. There is really no importance. It is like any other thing. It is just another magazine thrown on the truck.

MR. CAMP: I am sure you know the circulation of TV Guide now in Ontario weekly. What is it?

THE WITNESS: Approximately 900,000.

MR. CAMP: At least. The retail price of TV Guide is?

THE WITNESS: 15 cents.

MR. CAMP: The wholesaler gets how much of that?

THE WITNESS: I am not aware of that. Mr. Romanez would be.

MR. CAMP: You don't know how

much the wholesaler gets and the newsstand dealer gets?

THE WITNESS: No.

MR. CAMP: Presumably he gets some portion of that. Do you know any magazine sold on the newsstands in Ontario that has the circulation TV Guide has?

THE WITNESS: No.

MR. CAMP: Do you know any newsstands that would not carry TV Guide?

THE WITNESS: No, none.

MR. CAMP: So the fact is TV Guide is probably far and away the most significant magazine handled by newsstands?

THE WITNESS: Within those terms, yes.

MR. CAMP: Within the terms of volume sales. Possibly it is to you as well as the wholesalers, is it not?

THE WITNESS: Yes.

MR. CAMP: It is not just a magazine dumped on a truck?

THE WITNESS: I think any magazine is another magazine dumped on a truck.

MR. CAMP: I thought you said it was just another magazine that would take space up in a truck?

THE CHAIRMAN: We happen to have some knowledge that TV Guide is probably the major periodical on the market and you are telling

us it is not very important?

THE WITNESS: I think I said it is an important magazine. Every magazine has some importance.

THE CHAIRMAN: In terms of sales, it is the most profitable?

THE WITNESS: Yes.

MR. CAMP: To put it in perspective, selling 900,000 copies of TV Guide a week on the newsstands in Ontario, you are probably selling about 22,000 copies of McLean's a month or 5000 copies of Saturday Night a month.

THE WITNESS: I don't know those figures. I assume they are right.

MR. CAMP: Is the racing form, Daily Racing Form, also distributed by Triangle?

THE WITNESS: Yes.

MR. CAMP: You are the wholesaler for the Daily Racing Form?

THE WITNESS: Yes.

MR. CAMP: Do you have a figure for that?

THE WITNESS: No.

MR. CAMP: Can you get it for us?

THE WITNESS: Yes.

MR. HOLLAND: Q. So, Mr. Molasky, as I understand it, as of the first of June, 1971, you had already taken over the Kitchener area for Triangle Publications, which included TV Guide, the Daily Racing Form and Seventeen

Magazine?

A. Correct.

MR. CAMP: Any others, Mr. Holland?

MR. HOLLAND: Q. And this would be, to put it mildly, a very substantial shock to the purchasers of that geographical area?

A. I would assume so.

Q. Now, had any other North American distributor given you the distribution rights, if we can call it that, in the Kitchener area, as of the 10th of June, 1971?

A. MacFadden-Bartell Corp.

Q. When was this?

A. I was instructed we would be made the distributor July 6th.

Q. In the Kitchener area?

A. Correct.

Q. Although you had not actually taken it over?

A. Yes.

Q. At the time of June 10th, of this meeting, you had not taken it over but you were already being told you would have the distribution rights or the wholesaling rights in the Kitchener area effective July 6th?

A. Correct.

Q. You had been given a written communication to that effect?

A. Yes.

THE CHAIRMAN: Could we have some indication of the publications of MacFadden-Bartell?

THE WITNESS: Mr. Romanez has that.

THE CHAIRMAN: Surely you have some idea what their publications are?

MR. HOLLAND: Q. Perhaps, before we get to this, this is an American organization?

A. Yes.

THE CHAIRMAN: Is the witness telling me he doesn't know what MacFadden-Bartell's publications are?

MR. HOLLAND: Q. Would you mind telling us that?

A. I have a chart which shows that. May I?

THE CHAIRMAN: Certainly.

THE WITNESS: Approximately 100 magazines, True Story, True Confessions, True Romance ---

THE CHAIRMAN: Be very careful. All I have asked is what the more significant ones might be.

THE WITNESS: I think True Story and Photoplay. I really do not have the figures on that.

THE CHAIRMAN: I wonder if we could have this document, or a copy, for our records, so we can see it?

MR. CAMP: Do you have it?

MR. SEDGWICK: No, I don't.

THE CHAIRMAN: Do you have any objection to having copies made?

MR. SEDGWICK: You can Xerox a few and give me one.

THE CHAIRMAN: We will do it at our expense.

MR. SEDGWICK: Thank you very much. (Laughter)

THE CHAIRMAN: Just before we break for lunch, if I may ask one or two questions:

Between the time that you had the conversation with Mr. Hill in which you said that you would pay $50,000 more than whatever the price was that this group, Cosgrove and others, were prepared to pay, without knowing what it was, about when was that, April the 21st or so?

THE WITNESS: Yes.

THE CHAIRMAN: Between that time -- let us put it this way -- you made another call to Hill the next day and that was April 22nd?

THE WITNESS: Right.

THE CHAIRMAN: Between that time and the time that Triangle made its decision -- do you know when Triangle made the decision and notified Hill they were no longer interested?

THE WITNESS: I was notified, I believe, the 28th of May.

THE CHAIRMAN: By whom?

THE WITNESS: Mr. Hugh Proctor, he is assistant circulation manager.

THE CHAIRMAN: What did he notify you?

THE WITNESS: He asked if I would be their distributor in Kitchener and expressed he would like to have an answer as soon as possible.

MR. CAMP: It wasn't the other way around?

THE WITNESS: Absolutely not.

THE CHAIRMAN: Did you, between that time, 28th of May and the 21st of April, have any discussion with anyone in the executive of Triangle, including Mr. Lichtenberg, in connection with Kitchener's position ---

THE WITNESS: No.

THE CHAIRMAN: You did not?

THE WITNESS: It was none of my business.

THE CHAIRMAN: Did anyone in your firm of Pierce or Metro Toronto News or anyone else, have any conversation with Mr. Lichtenberg, or anyone in his firm, in connection with Kitchener's position?

THE WITNESS: Not that I know.

THE CHAIRMAN: Did anyone else have some discussion with Mr. Lichtenberg in this connection?

THE WITNESS: I don't know.

THE CHAIRMAN: Would your father have known about this, your discussion with Kitchener and the offer there?

THE WITNESS: Yes.

THE CHAIRMAN: Would he have known about it on April 21st or 22nd?

THE WITNESS: When I first called Mr. Hill?

THE CHAIRMAN: Yes.

THE WITNESS: No.

THE CHAIRMAN: How soon after that did you talk to him about it?

THE WITNESS: I don't know.

DR.JEANNERET: Triangle took the position that you consulted them that Metro Toronto contacted them before the sale?

THE WITNESS: I am not aware of that.

DR.JEANNERET: But you did think it would be necessary to check lines with distributors before entering into a sale?

THE WITNESS: Yes.

DR. JEANNERET: Did you not have any conversations with Triangle about your position if you did succeed in purchasing?

THE WITNESS: As I said to you before -- over and over again at first I discussed with them.

THE CHAIRMAN: He doesn't do it by a handshake, he approaches them and then he discusses it and then he checks.

Now, what is the relationship between Pierce that you know and Triangle historically and at the present time?

THE WITNESS: Triangle was a supplier of mine. When I say "mine" of our company's. I tried to do the best job for Triangle as I would do for any other national distributor.

THE CHAIRMAN: Now, you have gone back a couple of times. Let me take you back. Was there not at any time, historically at least, an association between your grandfather and the owners of Triangle?

THE WITNESS: Yes.

THE CHAIRMAN: What was that association, was it a business association?

THE WITNESS: I believe they were handling racing wires.

THE CHAIRMAN: Anything else?

THE WITNESS: No.

THE CHAIRMAN: It was a business relation?

THE WITNESS: Yes.

THE CHAIRMAN: Does it have to do with the publishing relation?

THE WITNESS: No.

THE CHAIRMAN: And is there any relationship at this time between those two firms other than the one as a distributor and the other as a wholesaler?

THE WITNESS: That is all the relationship there is at this time.

THE CHAIRMAN: All the relationship there is at this time. And is the relationship one of direct contact doing business in the United States by Triangle as a distributor and Pierce as a wholesaler on a day-to-day basis?

THE WITNESS: Correct.

THE CHAIRMAN: That is, Triangle did deal with Pierce as a wholesaler in what markets?

THE WITNESS: St. Louis, Kansas city, New Orleans.

THE CHAIRMAN: So, Pierce is what you

could call a major wholesaler of Triangle materials?

THE WITNESS: There are people a lot larger than we are.

THE CHAIRMAN: It is time to say if you are major or minor. Are you a major or a minor?

THE WITNESS: Well, not major or minor.

THE CHAIRMAN: But you are significant?

THE WITNESS: Yes.

THE CHAIRMAN: What volume did your firm Pierce do with Triangle in the United States in terms of dollars?

THE WITNESS: I think I could answer usually by the number of copies sold -- approximately 125,000 copies.

THE CHAIRMAN: When?

THE WITNESS: Per week.

THE CHAIRMAN: 125,000?

THE WITNESS: 125,000.

THE CHAIRMAN: Do you set it at 125,000 copies?

THE WITNESS: That is TV Guide.

THE CHAIRMAN: What about your volume in relation to all these other periodicals or books or whatever it is that Triangle produces? What is your weekly or monthly volume with Triangle, in terms of business? Would it be $24 million a year, $30 million a year?

THE WITNESS: I would say approximately

$5 million a year. That is $5 million billing to the retailers.

THE CHAIRMAN: That is Triangle?

THE WITNESS: No, that is the total billing.

THE CHAIRMAN: I am trying to get at what your relationship with Triangle is in terms of dollars.

THE WITNESS: Maybe 10 per cent.

THE CHAIRMAN: Maybe 10 per cent?

THE WITNESS: Maybe.

THE CHAIRMAN: Does the same figure apply to the other markets in which you are distributing?

THE WITNESS: Yes.

MR. CAMP: Who notified you as to the decision of MacFadden-Bartell?

THE WITNESS: I was notified by Al. Traina, he was President of MacFadden-Bartell.

MR. CAMP: And he simply told you that he had made a decision to improve his distributorship by new buyers in Kitchener?

THE WITNESS: Yes.

MR. CAMP: You did not previously discuss the matter with him?

THE WITNESS: No, I did discuss it with MacFadden and I did discuss it with some other publishers as well.

MR. CAMP: In an effort to get you into Kitchener to take away distributorships from the

new operation?

THE WITNESS: The proper words are not "take away". The proper words are "better service".

THE CHAIRMAN: You solicited them?

THE WITNESS: I solicited only that I was moving into Kitchener with Triangle Publications and I felt that Metro Toronto News Company as a whole could do a better job and increase their volume. Increasing their volume is giving better service.

MR. CAMP: But you made these solicitations after you had the knowledge that you had no contract in Kitchener?

THE WITNESS: Yes.

THE CHAIRMAN: How long did it take Triangle to make up their minds, from the time you solicited?

THE WITNESS: I never solicited to Triangle.

MR. CAMP: I am sorry.

THE WITNESS: They gave me their notice approximately three weeks afterwards.

MR. CAMP: The contract between a wholesaler and a distributor, is it a matter of a written agreement, a formal contract to undertake to act for him as his wholesaler?

THE WITNESS: I have no agreements but I understand there are some written agreements.

MR. CAMP: It is another gentleman's

agreement?

THE WITNESS: Yes.

MR. CAMP: And is there a gentleman's agreement as to termination?

THE WITNESS: I have never seen it, so I can't really answer.

MR. CAMP: But written agreements do exist?

THE WITNESS: From what I understand, yes, sir.

THE CHAIRMAN: But you have never seen them?

THE WITNESS: I have never seen one. Of course, I am in St. Louis. I understand there are some agreements from years back which still operate from day-to-day.

MR. CAMP: That seems fair -- 30 days.

THE WITNESS: That is not up to me to decide.

THE CHAIRMAN: Tell me, just one final question. What would move you as a prudent businessman to make an offer to someone like Hill that no matter what he paid for a business you would pay him another $50,000 if you could get it? Did it relate to your anxiety not to have Cosgrove involved as a competitor or what was it?

THE WITNESS: It was strictly potentially buying another territory. We had London and Sarnia which were out of the question,

Hamilton looked out of the question and we were looking to expand our operations.

MR. CAMP: We established, Mr. Molasky, I may have forgotten what the gross sales were in Kitchener.

THE WITNESS: I just received that figure by hearsay last week which I understand is $1,300,000.

MR. CAMP: You found out it was $1,300,000 long after you made the offer?

THE WITNESS: Yes. I might say the offer was made also because I felt that Mr. Fred O'Brien, Mr. Brian Bramall and Gordon & Gotch and Terry Cosgrove are in business as well as I am. I do not feel that they overpaid their territory and I took their judgment of what they paid for the company.

THE CHAIRMAN: You told us you didn't know what they had paid for it.

THE WITNESS: I am sure if they were in these circumstances they would offer $50,000 more than I would pay and it would not be overpaying for a territory.

THE CHAIRMAN: Gentlemen, we will adjourn until 2.15 p.m.

MR. SEDGWICK: What time, sir, do you propose to arise in the evening?

THE CHAIRMAN: Well, bearing in mind the tenacity of counsel and the material that is presented before us we could go on until six or

seven but under the circumstances probably four-thirty or a quarter to five, Mr. Sedgwick.

MR. SEDGWICK: Bear in mind that I have hardly said a word yet.

THE CHAIRMAN: But, of course, Mr. Sedgwick, we will want to proceed until we finish.

MR. SEDGWICK: I don't mind sitting until six or so, because I know you would like to conclude my clients today and tomorrow.

THE CHAIRMAN: Mr. Molasky will probably be on tomorrow again.

MR. SEDGWICK: Yes.

---Luncheon adjournment.

--- The hearing resumed at 2.15 p.m.

THE CHAIRMAN: We will proceed again, please. I expect Mr. Camp will be here shortly. Would you proceed, Mr. Holland, with the examination?

MR. HOLLAND: Q. Mr. Molasky, I want to get back to Kitchener again.

As I understand it you heard from someone of Triangle Publications that you were going to be given the rights to wholesale in the Kitchener area, is that correct?

A. Yes.

Q. Now, following that, did you approach MacFadden-Bartell to get the distribution rights?

A. Yes.

Q. And was it as a result of that approach that you took the distribution rights for the Kitchener area away from Hill?

A. Yes. I showed them the type of service we were doing in Toronto and they decided that the way we were increasing the volume and doing a good job in servicing the accounts that they would like to be serviced by the Metro Toronto News Company.

Q. And by doing this selling job you took that group of publications away from the purchasers of the Kitchener area?

A. I didn't take the publications

away: they asked me to be their distributor.

Q. And the effect of their asking--

THE CHAIRMAN: You had told us earlier that you had solicited the business. Now, which was it?

THE WITNESS: I did solicit.

MR. HOLLAND: Q. You solicited the business and as a result of that solicitation and the sales growth in Toronto you took over the district for these publications from the purchasers of the Kitchener area?

A. Correct.

Q. To whom did you speak at MacFadden-Bartell in connection with this takeover of their distribution?

A. Al Traina, and Lou Fusco.

Q. Where did you see them?

A. In Miami.

Q. When did you see them in Miami?

A. Approximately 24 hours after --

Q. When?

A. The last week of May.

Q. Who else did you approach insofar as the distributors are concerned with relation to Kitchener?

A. Everyone on the list.

Q. Everyone on the list?

A. Yes.

Q. We already know the reaction that

you got from MacFadden-Bartell. What reaction did you get from the other distributors?

A. At that time they made a verbal or a written commitment for the Kitchener area.

Q. That they had made a commitment?

A. Right.

Q. If you had succeeded in your solicitation of these distributors, we suggest to you that you would, in effect, have taken over the whole Kitchener area at no cost?

A. That is correct.

Q. The area that you had offered to buy just a short time before for $50,000 more than the Canadian group had paid for it?

A. Correct.

Q. Now, let's get down to this meeting in your hotel room at the Inn-on-the-Park on the 10th of June last in the afternoon. Just to refresh our memories, I think we should go over who was there and, as I remember it, you were there, Mr. Romanez, your Toronto manager from Metro News Company was there, Mr. O'Brien, one of the purchasers of Kitchener was there, Mr. McMonigle was there of Metro News Company, Mr. Bramall, one of the purchasers of Kitchener, who comes from British Columbia, was there and Mr. Jim Grubb was also there?

A. Correct.

Q. Was there anyone else there?

A. No.

Q. At this time, you had Triangle for that area and you had MacFadden-Bartell for that area?

A. Correct.

Q. Did you, at that time, tell the Kitchener people, if you can call them that, that is the people who had purchased Kitchener, that if they attempted to come into Toronto or London or Sarnia, the way you had moved into Kitchener, you would raid Ottawa, Hamilton, Brantford, St.Catharines and Vancouver?

A. I think that question is misstated.

Q. You can answer it yes or no. I am asking you if you said that,

or words to that effect?

A. I can't answer it yes or no the way you stated it.

Q. Let's break it down a little bit. Was there any mention of your making a raid, or trying to take over Ottawa?

A. No.

Q. Did you know at that time Ottawa was owned or controlled by Mr. Fred O'Brien's father?

A. Yes.

Q. And Fred O'Brien was at the meeting?

A. Yes.

Q. At this meeting, did you make any reference to raiding or trying to take over Hamilton?

A. I expressed one thing and one thing only.

Q. All right. Let's just deal with Hamilton. Was there mention of taking over Hamilton?

A. In those words, no.

Q. Was there any mention of raiding Hamilton?

A. The only "raid" -- let me express this.

Q. Do.

A. It was expressed that if they wanted to continue on in Kitchener along with me

in Kitchener, we would maintain the Kitchener area. If they came into Toronto, which someone told me they solicited some of the accounts in Toronto, to protect our business, I mentioned to them that I would go into Ottawa, Hamilton and solicit accounts in those territories.

Q. Just pausing with Hamilton, Hamilton was owned by Fred O'Brien?

A. Yes, and Hamilton was mentioned too.

Q. Did you mention Brantford?

A. Brantford was mentioned too.

Q. Brantford was owned by Fred O'Brien's father?

A. Correct.

Q. Did you mention St.Catharines?

A. Correct.

Q. St.Catharines is owned by Mr. Jackson, who is Mr. O'Brien's brother-in-law?

A. Correct.

Q. Did you mention Vancouver?

A. Correct.

Q. And Vancouver is owned by Brian Bramall, who was there?

A. Correct.

Q. Then, if we can just switch to the situation in Hamilton for a minute, earlier in your evidence you mentioned that there were two geographical wholesalers serving Hamilton. I believe that one of them is known

as Wentworth News?

A. That is right.

Q. Is this a small distributor that only distributes TV Guide in the City of Hamilton?

A. No.

Q. What does it distribute?

A. I think they distribute Dell, and I believe at one time Fawcett.

Q. Dell and Fawcett?

A. Fawcett, yes.

Q. Would you explain what you mean by Dell?

A. Dell Publications and Dell Publishing Company, and Fawcett Publishing Company.

Q. Did they have Triangle Publications or Just TV Guide?

A. Triangle Publications, I think.

Q. I see. Was this just for the City of Hamilton?

A. Yes.

Q. Was Wentworth News -- who owned Wentworth News, so far as you knew?

A. Mrs. Fensky.

Q. When did she get Wentworth?

A. Before my time.

Q. Had the manager or the owner of Wentworth News died shortly before the 10th of June, 1971, to your knowledge?

A. I believe so.

Q. And was Wentworth News then in the estate at this time?

A. Yes.

Q. That is the 10th of June, 1971?

A. Yes.

Q. I suppose it would have been greatly, or would be greatly to the advantage of Mr. O'Brien to pick up Wentworth News if he could, because then he would have the rest of Hamilton.

A. I would seem so.

Q. Did you say to Fred O'Brien at this meeting that he would not get Wentworth News, but that you would get it?

A. Absolutely no. I said I felt I had a good chance in buying Wentworth News.

Q. Was this used as a threat at all, in any way?

A. Absolutely not.

Q. Did you indicate to Mr. O'Brien at this time that you wanted to buy Hamilton, Brantford and St.Catharines, but would not buy them unless you got Kitchener as well?

A. It was the other way around.

Q. What did you say to him about the purchase of Hamilton, Brantford and St.Catharines?

A. They asked me if I was prepared to make an offer to Kitchener News and my answer was no. I expressed to him, the only way I would be interested, was to go back to my father, buy

Kitchener News, if I could buy Hamilton, St. Catharines and Brantford.

Q. How about Ottawa?

A. No.

Q. So, in effect, at this time, you had negotiations with them about assigning Hamilton, Brantford, St.Catharines and Kitchener?

A. Yes.

Q. Insofar as the purchase price for Kitchener was concerned, did you offer them $50,000 more than they had paid for it?

A. I offered it to one of the principals in Miami, Mr. Bill Smith.

Q. When was that?

A. After Triangle.

Q. This would be before the 10th of June?

A. Right.

Q. Before you got MacFadden-Bartell?

A. Correct.

Q. And you met Bill Smith down there?

A. Right.

Q. What offer did you make to him?

A. $50,000 more.

Q. At this meeting on the 10th of June, when you had taken away MacFadden-Bartell, what offer, if any, did you make for Kitchener?

A. I made no offer.

Q. Did you tell the purchasers of Kitchener that the value was down because they

had lost two national franchises?

A. No. The way the conversation went, I think everyone knew what the score was.

Q. That the value was down?

A. Right, but I never offered any less money or any more money. There was no offer made.

THE CHAIRMAN: What does the witness mean when he says "everybody knew what the score was"?

THE WITNESS: I think they had fully recognized that we were distributing Triangle and they realized we were distributing MacFadden, and I think they realized we were interested in servicing the Kitchener area.

THE CHAIRMAN: They were in a very vulnerable position, then?

THE WITNESS: I would not say vulnerable. You are only vulnerable in the eyes of the beholder. They made a bad business deal

MR. HOLLAND: Q. They made a bad business deal?

A. In my eyes.

Q. Because they lost two American distributors?

A. Yes.

Q. One of them was as a result of your efforts?

A. Yes.

Q. Now, how did this meeting end on

the 10th of June? Was there a new meeting set up?

A. Mr. O'Brien said -- I asked him if he wanted to sell or not, and he said he would tell me the next week. He met with me that night, approximately about 2:00 o'clock in the morning, and stated that he hadn't made up his mind. We were having a social drink.

Q. Quite a social drink!

A. Quite so. The next thing I knew, I got a call from John Romanez stating ---

Q. That was the end of the negotiations?

A. Correct.

Q. Did you telephone Mr. O'Brien on June 14th and tell him that, in view of the proposed legislation, negotiations were off?

A. Correct.

Q. May I put it to you, then, in summary, Mr. Molasky, that as of June 14th, 1971, you or your family owned or controlled Metro Toronto News Limited which, in turn, owned half of Metro Toronto News Company?

A. Correct.

Q. Lambton News Service in Sarnia?

A. Yes.

Q. Which had closed on the Friday before?

A. Right.

Q. Western Ontario Distributors

Limited of London?

A. Yes.

Q. Which had also closed on the Friday before?

A. Yes.

Q. And Upper Canada News Limited, Belleville, which had closed on the 1st of June, 1971?

A. Correct.

Q. And I also, in summary, suggest to you that, as of the 14th of June, 1971, you or your family were involved in negotiations for the purchase of the following Ontario Wholesalers:

Kent News Service in Chatham?

A. No.

Q. Cornwall News Distributors Limited in Cornwall?

A. No.

Q. Mountain City News Limited in Hamilton?

A. No.

Q. That was the company owned by Mr. O'Brien. Wasn't that the concern of the meeting of June?

A. They were only negotiations. I can hardly say, by talking to a man, if he is willing to sell, there are negotiations in the purchase price.

Q. I didn't say that. I said you had negotiations for the purchase. You were

interested in the purchase and had had meetings with the principals concerning it and discussing the possible purchase?

A. This is probably what I would have said.

Q. You had a meeting on June 10th when the whole question was discussed?

A. Correct.

Q. Bearing that in mind, I will go back over it again. There had been negotiations for Kent News Services in Chatham?

A. That is wrong. First of all, when I called up Mr. O'Brien he had a contract with somebody else in Chatham and I can hardly negotiate with a man who had a contract with another person.

THE CHAIRMAN: Counsel, we have just had evidence, and it was explicitly clear, that Mr. Molasky was quite prepared to negotiate with Mr. O'Brien -- Mr. Hill in Kitchener, at a time when he had an outstanding contract with the purchasers of his organization. I wonder if Mr. Molasky would reflect on his answer?

MR. SEDGWICK: When counsel asks a question and gets an answer, that is that. If I ask a question and my witness says no, I don't think he is entitled to cross-examine. He is bound by his answer. I produced the witness and his answer is no, and that is his answer.

MR. HOLLAND: Obviously there

was some misunderstanding between myself -- the meaning of the term.

THE CHAIRMAN: There is some area of dispute as to interpretation. Please be advised to carry on.

MR. HOLLAND: Q. You dealt with Kent?

MR. SEDGWICK: He said no.

MR. HOLLAND: Q. As of the date June 14th, 1971 ---

A. We had no negotiations as such with Kent.

Q. As of the date June 14th, 1971, had you had any negotiations with Cornwall News Distributors Limited in Cornwall?

MR. SEDGWICK: He answered that question by saying no. It was precisely that question and he said no.

MR. HOLLAND: There is a difference in interpretation of the word "negotiation".

MR. SEDGWICK: There is merely a difference in the inflection in your voice.

THE CHAIRMAN: He had a discussion with these people at some time or another.

MR. SEDGWICK: He said that.

THE CHAIRMAN: He said that some of these were available.

MR. SEDGWICK: He said there were no negotiations at that date.

MR. HOLLAND: Then let us change the wording.

Q. As at that date, had you had discussions concerning a prospect of sale in connection with one Kent News Service in Chatham?

A. I told you that before.

Q. The answer is yes?

A. Yes.

Q. With Cornwall News Distributors Limited of Cornwall?

A. I answered that before, yes.

Q. Well, I am putting this to you in summary.

A. I am saying yes.

Q. Mountain City News Company in Hamilton?

A. Yes.

Q. Seaway News Company Limited in St. Catharines?

A. No.

Q. May I pause there; Mr. Molasky, in this conversation on the 10th of June, did you not say that you would buy Kitchener but only if you could get Brantford, St. Catharines and Hamilton as well?

A. I told you that before, yes.

But the principals and owners of St. Catharines were not at the meeting and I can hardly see how I could have negotiations without the principals being there.

Q. General News and Novelty Company, Brantford?

A. No, I did not talk to them.

Q. Did not Mr. Fred O'Brien manage the company for his father?

A. I understand so.

Q. But because you did not talk to the father who was not the manager you say you did not have any discussion?

A. He was the principal owner, you have stated that before, because I can't negotiate with a manager.

THE CHAIRMAN: He didn't have discussions with Mr. O'Brien's father?

MR. HOLLAND: No.

Q. And, of course, you had had discussions concerning Kitchener News Company Limited in Kitchener?

A. Yes.

MR. HOLLAND: Mr. Chairman, that finishes the questions I have concerning the Kitchener transactions. Are there any questions that the Commissioners would like to put to the witness? It might be a good time to do it now in connection with that transaction?

MR. CAMP: Well, this has really a

little more to do with the technique, Mr. Molasky. In the present situation that you now enjoy in Belleville, how do you deliver, how does TV Guide reach the wholesaler or the distributor?

THE WITNESS: Would you repeat that, please?

MR. CAMP: How does TV Guide, for example, in the instance of Belleville reach the wholesaler from the distributor?

THE WITNESS: The Metro Toronto News Company, it is put on their trucks and delivered to the news dealers.

MR. CAMP: Individually?

THE WITNESS: Yes.

MR. CAMP: How is this done in Kitchener?

THE WITNESS: The same way.

MR. CAMP: Would it have been done any different if you had acquired a position?

THE WITNESS: No.

MR. CAMP: So, fundamentally what is really happening is that you acquire a territory and service it all from one place?

THE WITNESS: That is correct, I think. Mr. Romanez would be more capable of answering that type of question.

MR. CAMP: I think this morning, did you give me the Ontario circulation of the daily racing form?

THE WITNESS: No.

MR. CAMP: Did anyone suggest to you during lunch that perhaps I exaggerated the sales of TV Guide in Canada?

THE WITNESS: I was told that the 900,000 figure was for all of Canada.

MR. CAMP: So, I think Ontario would be something like 500,000?

THE WITNESS: Yes.

MR. CAMP: Everything in Canada, roughly half of it is in Ontario.

THE CHAIRMAN: It depends what eye of the beholder is used.

MR. CAMP: To clarify a point arising out of your evidence this morning, Mr. Molasky, the 125,000 figure you cited for TV Guide on your American operation, were you talking about newsstand copy sales or were you talking about income to the company as a result?

THE WITNESS: Pierce News Company, New Orleans and Kansas City sales.

MR. CAMP: St. Louis, Kansas City and New Orleans?

THE WITNESS: 125,000 approximately.

MR. CAMP: Out of those three cities?

MR. WITNESS: Yes, sir.

DR. JEANNERET: With respect to Kitchener I do not have any questions. I have some general questions which I can ask later.

MR. CAMP: I had one more to ask Mr. Molasky. Mr. Molasky, I was just curious about

the means by which you service all these outfits from here and I assume the newsstand date on which publications are available on the newsstands is the same?

THE WITNESS: Correct.

MR. CAMP: For example, it would reach all the newsstands in Toronto at the same time?

THE WITNESS: Right.

MR. CAMP: It would reach all the newsstands in Kitchener at the same time barring weather, and so on?

THE WITNESS: Correct.

DR. JEANNERET: Within what?

THE WITNESS: Within a two-day period.

DR. JEANNERET: That is significant.

MR. CAMP: I assume this is purely a matter of geography?

THE WITNESS: Yes.

MR. CAMP: It will be in Toronto newsstands a day earlier, I assume?

THE WITNESS: I believe I stated before that Mr. Romanez would be more capable of answering this question.

MR. CAMP: But I assume in the matter of Toronto it would reach the newsstands on the same day in Toronto?

THE WITNESS: I assume so, yes. Mr. Romanez can answer that better than I.

THE CHAIRMAN: Just so I can see you, I am interested in the conversation you did have at this June 10th meeting with Messrs. O'Brien and others and my notes indicate that you said they wanted to operate in Kitchener, they had the Kitchener firm which they had bought?

THE WITNESS: Yes.

THE CHAIRMAN: And this was at a time when Triangle made a decision to ask you to serve and you were serving Kitchener and the other firm of MacFadden-Bartell had given an indication of leaving the Kitchener situation. Are my notes correct that you said that if they want -- that is to say the Kitchener group -- to maintain themselves in Kitchener with you, that would be okay with you under these circumstances, is that what you told them?

THE WITNESS: Correct. As I told you before I was advised from certain people that the possibility of Kitchener was mainly limited to the Toronto area.

THE CHAIRMAN: How did they come into Toronto if they had nothing to sell from Triangle or MacFadden-Bartell or anyone else?

THE WITNESS: They still had publications.

THE CHAIRMAN: Which ones do you think they could have brought into Toronto which would be competitive with what you were carrying?

THE WITNESS: Curtis.

THE CHAIRMAN: Do you carry Curtis?

THE WITNESS: We carry Curtis.

THE CHAIRMAN: In any event, this is what you told them that as long as they were prepared to live in Kitchener with you and with these new acquisitions of yours in Kitchener that was fine but if they tried in any way to move into these other areas into Metropolitan Toronto or Brantford,St. Catharines, you would move into Brantford, St. Catharines, Hamilton and Ottawa?

THE WITNESS: That is correct.

THE CHAIRMAN: Does that mean too that that statement of yours was intended to mean that you would take Triangle and MacFadden-Bartell away from them in these places?

THE WITNESS: I can't talk for Triangle and I can't talk for MacFadden-Bartell.

THE CHAIRMAN: You were prepared to solicit MacFadden-Bartell for Kitchener. Were you prepared to solicit them for St. Catharines, Brantford, Hamilton, Vancouver and Ottawa?

THE WITNESS: I think with Triangle and MacFadden-Bartell, if you take every one of those names that is what I was planning to solicit.

THE CHAIRMAN: So, you told them if they did this you would do that?

THE WITNESS: Yes.

THE CHAIRMAN: I take it that what you have told us indicates that at this meeting of

June 10th in Kitchener they were disposed to sell to you if arrangements could be worked out?

THE WITNESS: There was no offer on June 10th.

THE CHAIRMAN: I didn't suggest to you that question. I said that they were disposed to sell to you if you were prepared to buy.

THE WITNESS: If Hamilton was disposed to sell.

THE CHAIRMAN: Let us be explicit. I was talking about Kitchener. You had a conversation and you said, "They asked if I was prepared to make an offer for Kitchener News. I said I would have to check with my father but we would take it if we could also buy St. Catharines, Hamilton and Brantford". Is that substantially what you said?

THE WITNESS: That is correct.

THE CHAIRMAN: Perhaps we can go on with the other line of questioning.

MR. HOLLAND: Yes.

Q. I am going to switch the topic a little bit.

MR. SEDGWICK: Is that the end of Kitchener?

MR. HOLLAND: That is the end of Kitchener for a while.

MR. SEDGWICK: That is a good thing, too.

MR. HOLLAND: Q. Mr. Molasky, I want

to try and get some sort of percentage figures from you, if I can, and if you can give them to me, on the deduction that is made from the sale price of a magazine along the line of the publisher right down to the ultimate purchaser. If, for example, a magazine goes on the stand at 50 cents a copy here in Toronto, generally speaking, what percentage would the retailer keep?

A. 20 per cent on all magazines.

Q. And, generally speaking, what percentage would the wholesalers, such as Metro Toronto News Company, keep?

A. It is all different. I don't have the breakdown of every publisher by title. Some titles come out and offer 50 per cent discount and some may offer 25 per cent discount.

Q. So, you cannot give me any rule of thumb on percentage?

A. No.

Q. Now, how about the distributors?

A. I have no idea what the distributor gets.

Q. And have you any idea what the publisher ultimately ends up with on the 50-cent final charge?

A. I have no idea. I am not a publisher.

DR. JEANNERET: Mr. Holland, may I ask, you referred to the wholesaler's margin and Mr. Molasky pointed out that it varies from

publisher to publisher. Is there any confusion of terminology here? It seems to me the wholesaler buys from the distributor?

THE WITNESS: That is correct. When I said "publisher" I meant to say national distributor.

MR. HOLLAND: Q. As I understand it, Mr. Molasky, Metro Toronto News Company in the general Toronto area serves some bookstores and some retail outlets but not others?

A. That is right.

Q. And would the retailer get a larger cut, if we can call it that, should they deal direct with a distributor or the publisher rather than with Metro Toronto News Company?

A. On books, yes.

Q. When you talk about books you are talking about paperbacks?

A. Right.

Q. How about magazines?

A. To the best of my knowledge I don't know of any magazine sold directly except Family Circle and Woman's Day.

Q. Then, let us go to paperback books. Can you give me the percentage figures, the final retail price, broken down between the publisher, the distributor, the wholesaler, the retailer and the ultimate consumer?

A. As I said before, every national distributor or publisher has a different

price schedule. My price schedule to a retail concern is 30 per cent fully returnable. There are also small accounts which are very costly to service and they just get 20 per cent. This is a rule of thumb throughout the country of Canada and also in the United States.

Q. Would you explain these percentages for us a little bit? You say 30 per cent, that means that they get 30 per cent off the market retail price?

A. Correct.

Q. And in return for that you distribute the books, the paperbacks to the retailers?

A. Correct.

Q. And also in return for that, you will take the returns from the retailer, that is, the books that have not been sold?

A. Correct.

Q. You take them back at cost?

A. Correct.

Q. And then you mentioned 20 per cent and I didn't follow your explanation very well.

A. There are two prices on books. If an account spends $10 a week in books, we allow money to send a truck over there, they are given a 20 per cent discount. If that account sells $50,000 a year in books, we give him a 30 per cent discount.

Q. And is that across the line, 30 per cent across the line?

A. Across the line.

Q. No matter what arrangement you have with the distributor or the publisher?

A. Correct.

Q. You have already indicated to us that some bookstores or retail outlets do not deal through Metro Toronto News Company?

A. Correct.

Q. How do they get their paperbacks?

A. They buy them direct from the publishers, through the national distributor or from the publisher.

Q. I see. So they cut out the North American distributor and they cut out the Ontario geographical wholesalers, they buy direct from the publisher?

A. Correct.

Q. And what do they get off, do you know?

A. As a rule of thumb I would say 40 per cent discount.

Q. 40 per cent?

A. Correct.

Q. So it would seem clear to me it would be to the advantage of a retailer if he could, to buy direct from the publisher and get a 40 per cent discount as opposed to buying from Metro Toronto News Company, for example, and getting only a 30 per cent discount?

A. Yes, that is true as far as discount. It is not true as far as dollars in the bank account at the end of the year. There is a service that we do for these accounts. We carry a large inventory. If they buy direct

it might take two or three weeks to get Love Story. It would take 2 or 3 weeks to get Love Story back.

Q. It takes 2 or 3 weeks to get it from the publisher?

A. Correct.

Q. From you they get it ---

A. 24 hours.

Q. Does that apply to any magazine pretty much, or well recognized paperbacks that Metro Toronto News, for example, would provide 24 hours service?

A. I can't pinpoint it. For the most part, yes.

Q. And you keep a large stock, then?

A. Correct.

Q. Now, if the proprietor of a retail outlet, for example, a bookstore in Toronto, needs service by Metro Toronto News Company, wishes tochange away from Metropolitan Toronto News Company and buy direct from the publisher, is this an easy thing to do?

A. I have never had that happen.

Q. You have experience in the industry, I believe?

A. Let me say this: In St.Louis, as well, there have been many accounts that have bought direct. So I assume it is rather easy.

Q. Do you think that a publisher or distributor that supplies Metro Toronto News Company, would turn around and supply a bookstore,

for example, in Toronto, just because that bookstore has at that time decided to order through Metro Toronto News Company?

A. I would assume yes.

Q. You have not, in your experience, run across any problems in connection with switching over from a geographical wholesaler direct to a publisher or distributor?

A. Like I said, I am not a publisher and I am not a national distributor. This is their decision.

THE CHAIRMAN: I think he is saying he doesn't know. He cannot say what follows in this practice.

DR. JEANNERET: He might have a position as a wholesaler on the question, they switch, though.

MR. HOLLAND: Q. It would not be to the advantage of an organization such as yours, of course, to have a switch made by any one of your customers, that is, with the customer purchasing direct?

A. If I was not giving the customer the service or the books that they desired, I would assume he would go direct and it would be my loss.

DR. JEANNERET: What about discount being the only differential?

THE WITNESS: Like I said before, we are a service company and if I could provide

better service and more dollars in the till at the end of the year, it is going to help in keeping that account.

MR. HOLLAND: Q. With regard to paperbacks, does that include university textbooks that are not bound with hardcovers?

A. No.

Q. Does Metropolitan Toronto News Company distribute softcovered textbooks for use in schools or universities in Ontario, to your knowledge?

A. I would think this percentage would be very minor.

MR. HOLLAND: These are all the questions on this aspect of the matter, Mr. Chairman.

DR. JEANNERET: Mr. Molasky, may I ask you to what extent is your selection of materials that you handle -- I guess I am thinking very largely of paperbacks here, because they are representing a very wide range of publishers -- to what extent is is based purely on merchandising considerations, that is to say, on profitability? To what extent is it based on selection?

THE WITNESS: I believe I would leave that up to our management in Toronto, John Romanez or Johnny McMonigle, or our book department in St.Louis, separate book management in Kansas City, New Orleans and St.Louis.

DR. JEANNERET: You mean there might be policy considerations in addition to the

question of profitability?

THE WITNESS: I have no policy. Mr. Romanez has complete supervision of Metro Toronto News Company as to what he does. Everything sells at a discount.

DR. JEANNERET: Going to this question of differential and discount, I would like to ask you, and perhaps this will be something we will have to ask Mr. Romanez: How might Canadian publications -- I am thinking largely of paperback publications -- come to your attention or the attention of your wholesale company, and under what circumstances might you include them in your merchandise that is being handled by your news company? Would this be something you would delegate too?

THE WITNESS: Generally, yes. He is free to order any type of books he wants.

THE CHAIRMAN: Mr. Romanez, you had better get in the bull pen and get warmed up.

DR. JEANNERET: Speaking as a wholesaler and,again in relation to your service that you are referring to of booksellers, do you know what your policy is with respect to ordering for specific titles in mass market paperback series when you don't have them in stock, but what is your policy?

THE WITNESS: Again I refer to Mr. Romanez.

DR. JEANNERET: When they are not

yet published?

THE WITNESS: They are brought to our attention and we put them out.

DR. JEANNERET: Do you report back to the customer on specific titles ordered?

THE WITNESS: Well ---

DR. JEANNERET: When they order specific titles?

THE WITNESS: Generally not.

DR. JEANNERET: Do you require minimum orders of the accounts you handle?

THE WITNESS: We feel, if any retailer wants to buy one magazine, one novel, we will service that account. It is our duty and the national distributor's as well as the retailer's.

MR. CAMP: So that, in effect, if your Toronto wholesaler were approached by a distributor or publisher of a Canadian pocketbook, paperback, he would, himself, make the decision as to whether or not you would carry that and service his retail accounts with them, or is it the policy of your company that such a decision should be made in the home office?

THE WITNESS: There is no policy made in the home office. Everything is discussed -- when you say policy ---

MR. CAMP: In this particular regard?

THE WITNESS: No. There are no

discussions. If you asked me right now what publication is going out tomorrow, I can't tell you.

MR. CAMP: No one in the home office would know?

THE WITNESS: No.

MR. CAMP: So that the reason, one could say the paucity of Canadian paperback material on the newsstands would be the result of a decision made in Canada by your firm in Toronto?

THE WITNESS: Correct.

THE CHAIRMAN: This is a very interesting line. I hope I have got the answer you have given. This fellow that was going to be in the bull pen might have to answer some of these questions a little more explicit ly. Are you telling us that the titles and the number of titles, any one title that appears on paperbacks, that appears on the racks in cigar stores and drugstores and other places that your firm serves in Metropolitan Toronto, for example, that all the selections of these paperbacks as to titles, ordering of them and everything else, is done in Toronto?

THE WITNESS: Correct.

THE CHAIRMAN: How long has this been done?

THE WITNESS: January.

THE CHAIRMAN: Is that a policy decision you have made?

THE WITNESS: Yes. We have had our management up here in the past two and a half years, show up physically in the warehouse. When John Romanez was hired, he was told at that time, my exact words, "This is your ball game".

THE CHAIRMAN: Speaking of ball. So this is since January?

THE WITNESS: Right.

THE CHAIRMAN: The selection of book titles is really in his hands?

THE WITNESS: Correct.

THE CHAIRMAN: We also find the decision as to whether or not the Canadian book, which has to be defined, but books published in Canada by Canadian authors, written by Canadian authors, it is going to be his decision as well, as to whether that book is used in your system?

THE WITNESS: Correct.

THE CHAIRMAN: Do you know how many such books are in the system at the moment, if any?

THE WITNESS: I have no idea.

THE CHAIRMAN: You don't know?

MR. SEDGWICK: Mr. Romanez has a list.

THE CHAIRMAN: He has everything. (Laughter)

What was the practice before January of 1971 in terms of selecting titles?

THE WITNESS: To some degree it would

be Robert Bernstein who is not longer with our company.

THE CHAIRMAN: I am almost tempted to ask you who is?

MR. CAMP: Mr. Romanez! (Laughter)

MR. SEDGWICK: I have to make a phone call which is urgent. Mr. Ridout will look after my interests in my absence.

THE CHAIRMAN: Pretty good excuse.

DR. JEANNERET: With reference to problems in warehousing, I suppose you run into problems of inventory. You were referring to problems in the warehouse. Is this problems of inventory?

THE WITNESS: That could include loose inventory.

DR. JEANNERET: Is this a large problem in your paperback operation?

THE WITNESS: Yes.

Please inform me, it is always protected and a very high turnover too so good inventory is not really a major consideration with you?

THE WITNESS: But the lack of supervision is and loose inventory can be picked up and walked out the door, too.

DR. JEANNERET: I see what you mean now, it is like stock-taking.

THE WITNESS: Yes.

THE CHAIRMAN: Mr. Sedgwick had to leave the chamber and I have to go by notes. Let us go back to the question I asked: What was the practice before January, 1971 in connection with the selection of titles for the Canadian market?

THE WITNESS: At that time our General Manager felt if we had people in each area of the wholesale distribution business we could keep more controls and sell more merchandise.

MR. CAMP: Your General Manager told you this?

THE WITNESS: Yes, he is no longer with us. At the time I myself became General Manager we decided it was to our best interests to sell the most merchandise if each company was run by itself and had their own bookmen or salesmen and since January this has been the policy of our company.

MR. CAMP: So, in New Orleans, St. Louis, Toronto, they were all emancipated

at the same time?

THE WITNESS: That is correct.

MR. CAMP: That would mean, then, that the local managers involved would have available in order for them to make the choice of books they were going to stock fundamentally your lists?

THE WITNESS: Yes.

MR. CAMP: They would have nothing else?

THE WITNESS: It is 100 per cent true in the States but it is not 100 per cent true here because of Canadian publications. We carry very few Harlequin books because they don't sell. In Toronto we carry very largely Harlequin books because it is No. 1 as far as Canada is concerned. I think at this time I should say this. We had a complete saturation test on Harlequin last year to see how many Harlequin books we sold.

MR. CAMP: Here or there?

THE WITNESS: Here in Toronto because they did sell up here and did not sell down in New Orleans, St. Louis or Kansas City so every area is treated differently. There are books that are sold in New Orleans that we cannot sell in St. Louis. There are books that are sold in Toronto that we cannot sell in St. Louis.

MR. CAMP: Do you service in the United States very many university bookstores?

THE WITNESS: Yes, sir.

MR. CAMP: This is a basic part of your

business?

THE WITNESS: Yes, sir.

MR. CAMP: Do you service them with magazines and books both?

THE WITNESS: Primarily books.

MR. CAMPS: Primarily books?

THE WITNESS: Yes.

MR. CAMP: On an exclusive basis, that is to say, with other publishing houses, whatever distributors you represent they have to take those books from you?

THE WITNESS: No, there are many bookstores in St. Louis that do buy direct. In fact our largest university does buy direct.

MR. CAMP: That you also service?

THE WITNESS: On a limited scale.

THE CHAIRMAN: On the list Capital Distributors, do you in Canada handle any paperbacks, Capital Distributors Canada?

THE WITNESS: This was brought to my attention yesterday.

THE CHAIRMAN: What was?

THE WITNESS: Capital Distributors. We carry only publications that are fast selling books and we carry the ones we believe we can sell up here and the ones we can sell in St. Louis Kansas City and New Orleans.

THE CHAIRMAN: The witness doesn't seem to have any difficulty in establishing that in his own mind. In any event, I just asked you about

Capital and you gave me a very interesting "capital" answer and I asked you whether your firm handled or got any kind of supply from Capital?

THE WITNESS: I assume we do with many more people than are shown on your blackboard.

THE CHAIRMAN: Just answer about Capital.

THE WITNESS: I am not completely aware of it in Ontario.

THE CHAIRMAN: You were aware of it yesterday because someone drew it to your attention. I wondered on what you got informed yesterday concerning Capital?

THE WITNESS: I was alarmed about pornography in books. Some of Capital's publications evidently get a stench and I was told that we did not carry any of these books.

THE CHAIRMAN: You don't carry any?

THE WITNESS: No.

THE CHAIRMAN: That is your understanding and Mr. Romanez can amplify that?

THE WITNESS: Right.

THE CHAIRMAN: What means does your company use, if any, to ensure that the standard you set exists, that you don't want to carry books which are, in your words, pornographic, whatever you mean, and I think I have some idea of what you mean? What means does your company take to screen out and ensure that at least to your own standards, whatever they may be, you do not carry

pornographic material in Canada?

THE WITNESS: We deal only with the major publishers and that concern is not there.

THE CHAIRMAN: I am asking you whether your firm in Canada does anything itself in this regard or if it just takes whatever the distributor, any one of those that you buy from, hands to you and distributes it?

THE WITNESS: No, we order the books that we feel will sell best. There is no way in the world that we can take every paperback published and read it word for word to determine whether it is bad.

THE CHAIRMAN: I am not asking you whether one should do this: I am asking what you do if anything in this connection?

THE WITNESS: Again I will say I will let Mr. Romanez answer it.

THE CHAIRMAN: Well, you are the commander-in-chief of this expedition and I would like to know --

MR. SEDGWICK: Mr. Chairman, again he doesn't know. I canvassed this question with Mr. Romanez and Mr. Romanez told me what he does. He does it on his own initiative and he does it locally and he does it, as Mr. Molasky said, in the light of what he knows about the local market. I don't think it is fair to ask this witness to give an answer which would be nothing but a guess.

Mr. Romanez is, I believe, informed

on these matters.

THE CHAIRMAN: You are telling us that, Mr. Sedgwick, on behalf of your client. He is an executive officer of this organization and fully involved in this organization and you are saying he cannot answer this question.

MR. SEDGWICK: Of course he can't. The paperbacks published are in the hundreds of thousands.

THE CHAIRMAN: I am asking him quite clearly on policy.

MR. SEDGWICK: The policy is not to read pornographic material if, in their view, it is pornographic material. I might say I have appeared in a great many pornographic cases from the Supreme Court down and I am not able to tell you what is obscene. The Supreme Court is not able to tell me and I don't see why Mr. Molasky should be put on the stand to say what, in his view, is obscene or what is pornographic. I don't know. It is a subjective decision. You would have to look at each book and you make a decision and your decision may well not be mine. What it has to do with this Commission, I do not know, I really don't know why this Commission need be concerned about the distribution of obscene literature. It seems to be a matter that concerns the police.

THE CHAIRMAN: I would refer you to the terms of reference of the Commission.

MR. HOLLAND: Mr. Chairman, surely what we are interested in here is in finding out who, if anyone, checks the material before it goes out.

THE CHAIRMAN: That is the whole point. It has escaped Mr. Sedgwick but that is what I meant.

MR. SEDGWICK: I have said that Mr. Romanez has that responsibility, Mr. Molasky lives in St. Louis --

MR. HOLLAND: Surely all Mr. Molasky has to say is, "I have delegated that responsibility to Romanez".

MR. SEDGWICK: He has said it ten times.

DR. JEANNERET: Let me ask a question that has to do with the other side of this thing and it may help us to understand this system of distribution a little better. What kind of communications are open to retailers, from the retailers' standpoint, that is from the retailer to the wholesaler or from the retailer conceivably to the distributor? I suspect there is none. What are the interfaces, what are the distributors here and retailers--almost exclusively through their representatives, where do the representatives fit in here between these various tiers of the distribution system that allows some feedback then from the bottom? Just for our information would you explain this to us?

THE WITNESS: Would you repeat that?

DR. JEANNERET: The question is as between the retailer and the Ontario geographical wholesaler, what is the nature of the feedback communication, to whom does the retailer speak? Can the retailer ever speak to a distributor, can he ever speak to the publisher?

THE WITNESS: I am sure there are telephone lines to the publishers.

DR. JEANNERET: I mean in the ordinary course of events you are servicing very, very closely these retail ranks, one way or another, you are in there in person, but very often, as I understand it, you are making the value judgments as to what is to be put up and I am sure the retailer in many cases is very glad that you are doing this.

THE WITNESS: We do not put up wherever we decide to put up. The retailers decide which shall be put up in their racks. They ask for our advice and we give our advice but if we feel we should put up 25 magazines all moving books and they recommend two new books and give us the titles of them, you will find that most of them get lists from Metro Toronto News Company of titles they have requested and that is what they receive, nothing more and nothing less.

DR.JEANNERET: Mr. Camp was asking a question, for example, about college stores where

the needs are specific, very widespread and in relatively large quantities and the trend is entirely away from textbooks toward wide-ranging reading lists as we know but the college store manager is going to want, presumably, 50 copies of this and 10 copies of that and 13 copies of the other.

Now, if you don't have these titles -- and this was the purpose of one of my earlier questions -- what sort of a report back does the retailer get and from whom and what can he do about it?

THE WITNESS: We send out what we have in the house, we then put through a re-order, we re-order the book and 99 per cent of the time, if he wants 10 books we order 25 books.

DR. JEANNERET: In other words, you are saying you would expect the regional retailers over whom you have control to operate a back order system?

THE WITNESS: Yes.

MR. CAMP: I hesitate to get back into this again, but just on a point of clarification, if you please.

In regard to what you have in your mind as to pornography, pornographic publications, did this relate purely to a Canadian situation or did this relate to your whole operation?

THE WITNESS: The whole operation.

MR. CAMP: Each regional manager is given the effective judgment as to pornography?

THE WITNESS: And where the laws are different as well.

MR. CAMP: And sometimes St. Louis would purchase a tale which the Toronto man would not be interested in?

THE WITNESS: Right.

MR. HOLLAND: Q. Can you tell me whether or not your organization here in Ontario, and I include Metro News Company here, receives special prices from North American distributors or publishers that are better than the prices received in Ontario by other Ontario geographical wholesalers?

A. I don't know what the other prices are to other wholesalers.

Q. Then they may or may not?

A. They may or may not.

Q. Then how does Metro Toronto News Company, for example, negotiate the price, for example, for TV Guide for Triangle Publications?

A. I think there is a price set, the same way as all publications. Those prices are what the wholesaler looks up to.

Q. From the answer, I gather there is one price for the whole industry for TV Guide?

A. In all publications.

Q. From that I gather that your organization in Ontario would have no price advantage over any other Ontario geographical wholesaler?

A. I don't know what other wholesalers receive in prices.

Q. But you have already said, for example, that TV Guide is a fixed price for all wholesalers in the industry?

A. It is a fixed price to Metro

Toronto News Company.

Q. But can you tell us that TV Guide is being sold at the same price, for example, in Chatham or Cornwall?

A. I would assume that TV Guide is being sold for the same price there.

Q. But there is no negotiation between your organization in Ontario and the North American distributors on the special prices?

A. I didn't answer that either. I said -- you asked me a question. If we get better prices. The prices I get maybe are the same prices of every other wholesaler. There are special price concessions, mainly because of service, because of operations we get. For example, family reading centres we build at our expense and the publishers are willing to pay for a portion of this business. If I am getting a better price in Windsor, Kitchener, I am not aware of it. All I am concerned with is what our company gets, what it can live with.

Q. Is there any discount for volume?

A. No.

MR. HOLLAND: Mr. Chairman, Mr. Commissioners, those are all the questions I have of this witness.

DR. JEANNERET: It might be helpful, by way of general information, if you could just make a comment on the so-called mass market paperbacks. We have been told it

is fair, but is it fair to say that the dividing line between the so-called mass market paperbacks and paperbacks as such, is getting fuzzier and fuzzier? This we certainly have observed. What is your own observation inthis area? The mass market paperback used to be priced at 95 cents, or something of this nature, and now it is almost twice that price. Is that a fair statement?

THE WITNESS: I would say inflation has set in on magazines as well. I would say yes.

DR. JEANNERET: I just want to revert briefly to this question of profitability which, as you say, is a consideration at the regional wholesalers's level. We will talk about that later. To the extent that profitability influences your decision as to what to carry in St. Louis, for example, I suppose this might mean a smallish sale of an expensive periodical or paperback, or whatever it may be, in preference to a somewhat larger sale of a very, very low-priced item, perhaps TV Guide, for example. Is that not so? It is profitability rather than gross?

THE WITNESS: It is still gross.

DR. JEANNERET: It is still gross in dollars.

THE WITNESS: Well, I ---

DR. JEANNERET: It is just for information.

THE WITNESS: It is hard for me to break down what does Triangle contribute to Metro News Company and what does Curtis contribute to Metro News Company? Who is to say what makes money and what doesn't make money? I think you have got the wrong impression. We have a profitability, but it is based upon retail. If they don't sell publications, those retailers are not going to carry magazine racks or novels. They are more concerned with their profitability because if they don't make a dollar, they don't sell magazines for their health. Every retailer governs what we put on that rack.

DR. JEANNERET: But given your control of the geographical area, as far as wholesaling is concerned, the retailer has not many options about the organization with whom he is going to deal normally. Normally he has no options. I know there are two or three little exceptions.

THE WITNESS: For the most part, yes. This is true in the United States and Canada.

DR. JEANNERET: I am sure it is.

MR. CAMP: You mentioned, Mr. Molasky, other business interests, but I wonder if there are any companies in the complex of your organization, which produce or sell other merchandise to the same outlets which you serve with your magazines through your wholesaling operations? Is there other merchandise apart from printed material

that you, or companies related to your company, sell?

THE WITNESS: On a very limited basis. Postcards.

MR. CAMP: Postcards?

THE WITNESS: I think we are out of the postcard business right now.

MR. CAMP: Not that you know of?

THE WITNESS: I would say key chains, souvenirs of Canada. What we sell them for and what we buy them for, I have no idea.

MR. CAMP: Is there any association between the principals of Triangle and principals of your enterprise -- I think you mentioned the Daily Racing Wire? Can you explain that?

THE WITNESS: This happened a long time before I was even born. This is hard for me to explain. All I know is from the last five years. It has taken a great change. Concepts have changed. What happened prior to myself coming into the business, my grandfather and Annenburg, or anyone else, it has never been discussed with me. I have heard it but never in detail and I think it is -- the question really has no bearing ---

MR. CAMP: I don't even know what a Daily Racing Wire is.

THE WITNESS: I don't know either.

MR. CAMP: There being no law against -- this is a hypothetical question, I

suppose -- would you still proceed in your interests, to acquire further wholesale accommodations in Ontario?

THE WITNESS: In Ontario? At this time ---

MR. CAMP: Let us say in Canada, not Ontario, but in Canada?

THE WITNESS: We have no plans of expanding or buying any other wholesale operations in Ontario or Canada.

THE CHAIRMAN: I am going to ask probably the last question. I think you will take the message back to your father that you have done well on behalf of the family interests. I want to say, in asking this question, the last question I put to you, Capital Distributors, you said something about pornographic and your counsel drew to my attention subsequently, pornography, you thought, was not part of our terms of reference. I must be careful of how I ask you this. In any event, it seems that you started off in Janaury of this year making certain changes in your management group in Canada, is that correct?

THE WITNESS: In Canada and the U.S.

THE CHAIRMAN: Canada is our particular concern and you started off in January?

THE WITNESS: Right.

THE CHAIRMAN: In January,

according to our evidence, you made your first approach to Mr. Bryan in Cornwall, you thought Mr. Bryan was interested in selling. Do you recall that evidence?

THE WITNESS: Yes.

THE CHAIRMAN: Subsequently, there seems to be a rather heavy pattern of activity on your part with relation to potential acquisitions and to acquisitions. Why was it that you seemed to take -- why was it you decided to attempt to expand in Ontario?

THE WITNESS: It was not just in Ontario. I say openly here, I had negotiations with various cities in the States, eight cities. The reason Ontario was brought up was for several reasons. I read several newspapers very closely, the construction, the population here and I built -- I am 24 years old, 20 years in the future Ontario is going to be a highly-populated area. Where there are people, there are sales of magazines. The economics of buying up here were right. It was not looking to get a word that was used against us -- a monopoly of Ontario. As negotiations for Windsor were $25,000 apart - if we were looking for a monopoly in Ontario, I guess we would have paid $25,000 for it. I would have tried to buy Chatham and Cornwall. To say we are looking to grab up whatever we could is a false statement. We were looking at many companies and we picked out spots, the same way as you

buy pieces of real estate. You look at several pieces of real estate and buy one piece. There is no doubt in any of our minds that these are is going to be very profitable.

THE CHAIRMAN: We will adjourn for about 15 minutes.

---Recess

THE CHAIRMAN: Mr. Sedgwick, do you wish to ask ---

MR. SEDGWICK: I have only two or three questions, sir. I will be very brief.

EXAMINATION BY MR. SEDGWICK:

Q. Mr. Molansky, would you be good enough to look at the Exhibit, which is Exhibit 2, and headed "Distributors". I looked at it and had the impression they may be listed according to their importance. They certainly are not listed alphabetically. Could you tell the Commission, please, looking at that list, which, in dollar volume is the number one distributor?

A. Curtis.

Q. That is the one towards the bottom, is that right?

A. Yes.

Q. I am still speaking of dollar volume related to your Toronto operation. Which would be the second one?

A. I would say Select Magazines.

Q. Could you rank the third?

A. Probably Dell Publishing.

Q. And then the fourth?

A. Triangle.

Q. They rank about fourth, is that correct?

A. Yes.

Q. How about the fifth?

A. I would say Independent.

Q. And sixth?

A. I think International.

Q. And seventh?

A. MacFadden-Bartell.

Q. And what would the eighth be?

A. Gordon & Gotch, probably eighth.

MR. CAMP: Mr. Sedgwick, it would help me if I could understand what the question is he is answering.

MR. SEDGWICK: In dollar volume, how do these distributors rank insofar as his operation Metro is concerned.

Q. Is that correct?

A. Yes.

Q. You say that Curtis is No. 1?

A. Yes.

Q. And comparing Curtis -- and I think you said this -- comparing Curtis with Triangle Publications which publish this TV Guide, what would their relative importance be?

A. I would say Triangle represents approximately 50 per cent of Curtis.

Q. That is put the other way, Curtis is twice as important in dollar volume as Triangle, is that correct?

A. Yes.

Q. That is all there is to that. And then may I just clear up something that I am sure was not clear in my mind and that is, when you contemplated the acquisition of another distributor,or when you were even thinking about it, am I right in thinking that you said there were really four steps -- the meeting and then if you come to a tentative agreement, a sort of a handshake, is that correct?

A. Correct.

Q. And you then approached the major distributors to see if they would consent to the transfer, is that correct?

A. Correct.

Q. And then your third step was the preparation of a legal agreement, is that right?

A. Correct.

Q. And the fourth step the actual closing?

A. Correct.

Q. And in that order, is that right, sir?

A. That is right.

Q. And then -- and this deals with

economies of distribution -- is there any particular reason why an organization which has its headquarters in Toronto has some advantage? What I am thinking of is what I am told and that is a great many of the large chains are in Toronto and you can make one deal which covers the whole distribution throughout Ontario, is that so?

A. That is correct.

Q. And by the large chains, which chains would you have in mind?

A. I would say Dominion Stores, Loblaw Stores, Steinberg's, Shopper's Drug.

MR. CAMP: Beckers.

THE WITNESS: Beckers, we are now installing family reading centres in Beckers. I am sure there are many others.

MR. SEDGWICK: Q. So that if you approach whoever the buyer is in Toronto he is in a position to deal for their whole Ontario chain, is that right?

A. Correct.

Q. And does that give you a distributional advantage in the sense that you save money?

A. Well, in a sense, if the program was a success in Toronto, our service would continue and they would not have to deal with four or five different wholesalers.

MR. SEDGEWICK: That is all for me, thank you.

Mr. Chairman, would it be convenient if Mr. Ridout were called at this juncture? The reason I mention it is in connection with those deals which were closed on the 11th of June, although the agreements spoke of a closing date of June 30th or earlier, Mr. Ridout made the arrangements to close, he made them with the solicitors on the other side and I thought it might be helpful if the Commission had his evidence now because it would follow sequentially the evidence of Mr. Molasky.

How do you feel about that, Mr. Holland?

MR. HOLLAND: Mr. Chairman, with respect, if my friend wishes to call Mr. Ridout as his witness I will be delighted if he would do so.

I would suggest, however, that witnesses that I have available be called first. There is some more evidence, I believe, that will be called dealing with this early closing date that I expect to be led by me and I would have thought that it would be better if Mr. Ridout gave his evidence as Mr. Sedgwick's witness after all of this evidence was before the Commission.

MR. SEDGWICK: With that I agree. I thought we had heard all we were likely to hear.

MR. HOLLAND: Not entirely.

MR. SEDGWICK: Very well, then.

THE CHAIRMAN: There are one or two questions I would like to ask your witness arising out of the questions you propounded.

MR. SEDGWICK: Certainly.

THE CHAIRMAN: Do I take it, Mr. Molasky that it is either your intention or you have other active contracts or that you are negotiating with Dominion, Loblaws, Shopper's Drug Mart, Steinberg's, for an exclusive position with them for the supply of paperbacks and periodicals through those chains?

THE WITNESS: In the territories that we are now serving.

THE CHAIRMAN: Your counsel, I thought, led you in connection with the whole of Ontario. What is your intention -- only within the areas that you are serving?

THE WITNESS: I think when my counsel said the whole of Ontario it was strictly stating one reason why it was a benefit through the area of the Metro Toronto News.

THE CHAIRMAN: Have you made any arrangements with Dominion Stores in connection with the supply to them?

THE WITNESS: Only on a local basis.

THE CHAIRMAN: Is that Metropolitan Toronto?

THE WITNESS: Yes.

THE CHAIRMAN: What about Belleville,

have you made arrangements in Belleville?

THE WITNESS: I think Bob McMonigle who is sales manager would have the answer to that.

THE CHAIRMAN: Would he also have the answer to the question that you would attempt to if you could, tie up the whole of the Dominion Stores chain for Ontario, if it were at all possible?

THE WITNESS: At this time absolutely no.

THE CHAIRMAN: Why?

THE WITNESS: We are only interested in serving the territories that we are now servicing in. If it came down to whether they wanted to buy merchandise from your warehouse in Toronto, the same way I stated before, I would not refuse an account one copy and I certainly would not refuse the Dominion many copies of books.

DR. JEANNERET: This is an important commentary on Mr. Sedgwick's question to you. Where you sell the chain in Toronto you are interested only in selling it and serving it in those geographical areas that you are operating in?

THE WITNESS: When we sell a chain to handle magazines on such a program we are also selling all other wholesalers throughout Canada. We are selling their products as well.

DR. JEANNERET: I almost understand you. Will you just explain that?

THE WITNESS: Well, for example, when we sold Loblaws at Metro Toronto News Company's

expense, we gave a cocktail party for all the managers of Loblaws throughout Canada. As a direct result we got family reading centres in Loblaws and many other wholesalers benefited.

DR. JEANNERET: Geographic territories would be respected, in other words, in this arrangement, generally speaking?

THE WITNESS: Yes. I believe some of the wholesalers were also asked to come up as our guests.

THE CHAIRMAN: What is a family reading centre, what is its purpose?

MR. SEDGWICK: I will show you a picture of one.

MR. CAMP: Mr. Molasky is very well informed of this and we may not need Mr. Romanez.

THE CHAIRMAN: I take it you are informed then for the purpose of supplying the racks to Loblaws or Dominion and directly servicing then but you would only do so throughout the areas you serve?

THE WITNESS: Yes, and we would assist any other wholesaler in building these racks.

MR. SEDGWICK: This is a picture of a rack. As the Chinese say, one picture is worth a thousand words. There is the thousand words.

THE CHAIRMAN: What you have produced through your counsel is a photograph of a

rack set up, if you will, and on the left-hand side are racks of paperback books. It is Food City Family Reading Centre and on the right-hand side are racks of periodicals. This is the service then that you supply?

THE WITNESS: At our expense.

THE CHAIRMAN: Now, I want to, if I can, continue with this to this extent: If Dominion want to have a service of this kind at some place that you do not serve, for example, Ottawa, are you prepared to offer that kind of service to them, if they want it?

THE WITNESS: No.

THE CHAIRMAN: Are you prepared to supply them with the books and periodicals if they were to pick them up from you in Metropolitan Toronto and take them themselves?

THE WITNESS: I don't think I could discriminate against anyone for coming into our place and buying magazines on a wholesale basis.

THE CHAIRMAN: Would the distributors discriminate against a seller who wanted to buy the periodicals or books, do you think?

THE WITNESS: No.

THE CHAIRMAN: They only sell to certain people, do they not, in your market?

THE WITNESS: That is right,

DR. JEANNERET: This is a fine example of buying around.

MR. CAMP: You have employed this elsewhere, I gather?

THE WITNESS: We have had it in St.Louis for five years.

MR. CAMP: I expect it is very profitable?

THE WITNESS; Yes.

MR. CAMP: What you do is, you supply the magazines and rack them, put them on and take them off?

THE WITNESS: What we do is this: We got out to the account, talk to the managers and the home office. We offer a custom-made family reading centre.

MR. CAMP: In your experience with these racks, is there any particular area in the rack that is advantageous over other positions in the rack?

THE WITNESS: No, the larger magazines are lying down in a flat pile.

MR. CAMP: You mean sideways 9 by 12 as opposed to 7 by 10?

THE WITNESS: Correct. As I said before, depending upon what the local store or stores desire to have.

MR. CAMP: You would supply them with the magainzes they wanted or conversely you would not be likely to supply them very long with magazines they didn't want and couldn't sell?

THE WITNESS: That is right.

MR. CAMP: But really your employee or representative, Mr. Molasky, would arrange the shelves?

THE WITNESS: There is no set rule. Every account is treated separately.

MR. CAMP: That is not part of the service?

THE WITNESS: Yes, we put up novels, we do not put up magazines.

MR. CAMP: I understand the picture is worth a thousand words.

THE CHAIRMAN: It would take a thousand words to explain it.

MR. CAMP: I was just looking at the picture at the Food City Family Reading Centre and I have not been able to find one Canadian publication which is racked, with its back to the front of the picture.

MR. SEDGWICK: My eyesight wasn't good enough.

THE CHAIRMAN: Do you have written contracts with Dominion, Loblaws, Food City, Shopper's Drug Mart and Steinberg's to supply the kind of installation shown on Exhibit 10?

THE WITNESS: No.

THE CHAIRMAN: Is there any condition you lay down in supplying this service that any one of these chains, Dominion, Loblaws, et cetera, permit only your line of paperbacks and periodicals to be displayed for sale in your particular outlets?

---EXHIBIT NO. 10: Photograph of Family Reading Centre in Food City.

THE WITNESS: No.

THE CHAIRMAN: To this extent, to your knowledge, do many of them carry other products, other paperbacks or periodicals?

THE WITNESS: For example, Woman's Day and Family Circle.

MR. CAMP: That is a store publication.

THE WITNESS: They are put in on the racks we furnish in the stores.

THE CHAIRMAN: We are talking about not an in-store publication, but something outside, other wholesalers.

THE WITNESS: No, it has never happened, I don't know.

THE CHAIRMAN: It has never happened?

MR. CAMP: Roughly speaking, do you agree, a store manager who is selling groceries wants to make reading material available to his customers and, therefore, he wants your service?

THE WITNESS: They have buyers. This is their job and what they are paid for, to get the most turnover on that rack.

MR. CAMP: The supermarkets have bookbuyers?

THE WITNESS: That is correct.

MR. CAMP: He buys from the catalogue or buys off list?

THE WITNESS: I believe we may have one of them here.

MR. CAMP: No wonder groceries are

so expensive.

THE CHAIRMAN: Mr. Romanez, when he is in the bull pen, I take it will be able to tell us about any changes you might require from time to time or any publishers of periodicals in Canada, in other words, what the margins are that you will expect from time to time. I daresay Mr. Romanez will be able to answer that?

THE WITNESS: Yes.

MR. CAMP: Do you act as wholesaler for any Canadian distributors?

THE WITNESS: We are a national distributor for many Canadian publishers.

MR. CAMP: Let me be more specific, magazine publishers, periodical publishers?

THE WITNESS: Yes.

DR. JEANNERET: He says they are national distributors. To clear up the terminology, what do you mean?

THE WITNESS: North American distributors. We are North American distributors in Canada.

MR. CAMP: Is that a separate company? You are both a distributor and a wholesaler?

THE WITNESS: That is right.

MR. CAMP: For certain Canadian publications.

THE CHAIRMAN: For what publications?

THE WITNESS: Could I have Mr.

Romanez answer that?

MR. CAMP: You don't know?

DR. JEANNERET: Have you any public plans to go into retailing?

THE WITNESS: At the moment, no, not in Canada, that I know.

THE CHAIRMAN: Thank you very much. We appreciate your coming.

MR. HOLLAND: I notice it is now 22 minutes past 4:00. The next witness I intend to call is John Romanez. However, his evidence may take a little time. I would think that, subject to the views of the Commission, it might be a good time to adjourn.

THE CHAIRMAN: I think we can concur with the proposition at this time to adjourn. We will meet again tomorrow morning at 10:00 o'clock.

---Adjournment

ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING

Mr. Richard Rohmer, Q.C.	Chairman
Dr. Marsh Jeanneret	Commissioner
Mr. Dalton Camp	Commissioner

Mr. Robert Fleming	Executive Secretary

APPEARANCES:

R. E. Holland, Q.C.	Commission Council
A. O'Donnell	Commission Council
Joseph Sedgwick, Q.C., and P.H.H. Ridout, Q.C.	for Metropolitan Toronto News Company & Affiliates.

Hearings held at 252 Bloor Street, West, Toronto, Ontario, July 14, 1971.

This transcript has not been edited, corrected or revised by the Commissioners, but may subsequently be edited, corrected and revised.

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TORONTO 1

I N D E X

I N D E X (Cont'd)

Toronto, Ontario,
July 14, 1971.

---The hearing commenced at 10.00 a.m.

THE CHAIRMAN: Now, ladies and gentlemen, we will commence the second day of the hearings. Mr. Holland, do you wish to speak to procedure this morning?

MR. HOLLAND: Yes, Mr. Chairman, I would like to call John Romanez.

JOHN ROMANEZ, Sworn.

EXAMINED BY MR. HOLLAND:

Q. Where do you reside, Mr. Romanez?

A. Toronto.

Q. Are you a Canadian citizen?

A. Yes, I am.

Q. And what is your present occupation?

A. General Manager, Metro Toronto News Company.

Q. And how long have you been General Manager?

A. Since February 20th, 1954.

Q. What was your occupation before that?

A. General Sales Manager and General Manager of Montreal News.

Q. What are the gross annual sales

of Metro News Company?

A. $10,400,000, approximately.

Q. You would be familiar with the geographical area serviced by Metro News Company?

A. Yes, I am.

Q. Mr. Romanez, I have a crayon here. Perhaps you would be kind enough to mark in on Exhibit 3 the area serviced by Metro Toronto News Company? I believe these are within two miles of North Bay, is that correct?

A. We do go up in these areas but there are only a few accounts in here, what we call galley. The bulk of our business is right around this little area here.

THE CHAIRMAN: Would you stand just to the side a little, Mr. Romanez, so we can see?

THE WITNESS: This would be the bulk of our business, I would say about 90 per cent of our business would be right over here and the balance in this area would be approximately 10 per cent and even 10 per cent would be high.

MR. HOLLAND: Q. But would you indicate the extent of the area? You actually distribute to within two miles of North Bay. I have a road map here which would help you identify that. Would you then sketch in the area that you actually do service from the Metro Toronto News Company?

A. We have the dealer in this

area over here. I have a complete set of dealer guides here which you can check through. We only have the odd dealer through here and the other ones, just one there happened to phone for magazines.

THE CHAIRMAN: Mr. Romanez, I wonder if you can help us because we are the ones who really should be hearing this and we are not getting this at all.

THE WITNESS: We may have one dealer up over here and in these areas over here we always have a few galleys here.

THE CHAIRMAN: What type of dealers?

THE WITNESS: Galley dealers, mail dealers. Accounts we mail out magazines to in a package. They send their own orders, they tell us what they want and we mail it out to them. Actually we are losing money on this area by mailing out.

MR. HOLLAND: Q. Mr. Romanez, is "this area" that you indicate which were there serviced by galley dealers, are any other wholesalers servicing that area?

A. This, I couldn't tell you. There may be on the fringe line. I know previously Belleville was servicing some and London was servicing some in these areas in here. It is not a cut and dried territory.

Q. Now, would you look at the area I am now indicating on the map where there seems to be a gap. Actually does Metro Toronto News

now link up with London to Western Ontario distributors?

A. Yes, we do.

Q. Then, would it be correct to colour that part also in pink?

A. I would say the odd accounts again, it is not solid. It is very sparse. This area over here would be solid and these areas over here would be very sparse (indicating). These ones I have marked here are sparse areas.

Q. And then all of them down here to Chatham, do you through London join the Chatham area?

A. On the fringe.

Q. Again, you have the galley dealers there?

A. Yes.

Q. Would you mark that, please?

A. Yes.

THE CHAIRMAN: Mr. Romanez, looking at that map would you say that Metro Toronto News Limited, with the exception of the Kitchener market, which it is now participating in in any event, that really from London and Sarnia and the area shown on Exhibit 3 in red straight east, including Metropolitan Toronto and running over to Belleville and north up to the Bruce Peninsula is totally the area of Metro Toronto News and its affiliate companies, would you say that?

A. Yes, I would.

Q. Really, what is left therefore is Brantford, Hamilton, St. Catharines, the Niagara Peninsula, Chatham and Windsor and as well Kingston, Cornwall and Ottawa, along the southern edge, is that right?

A. That is right.

THE CHAIRMAN: Have you any idea what percentage of the market your operations cover now in southern Ontario?

THE WITNESS: No.

THE CHAIRMAN: Thank you.

MR. HOLLAND: Q. Now, looking at Exhibit 4 which is a map of northern Ontario, does Metro Toronto News Company or any of its associated companies service any of that area?

A. No.

Q. Now, when did Metro Toronto News Company take over distribution of Triangle Publications to the Kitchener area?

A. May 1st.

Q. May 1st, 1971?

A. 1971.

Q. And at that time were you aware that the Kitchener area or the Kitchener News Company Limited had been sold?

A. At that time, yes.

Q. When did you first hear of this sale?

A. April 20th or 21st, I am not quite sure.

Q. How did you hear of the sale?

A. I believe it was on a Friday morning.

Q. How did you hear of it?

A. On Friday morning some publishers' representatives came to our office and informed us that they had heard that Kitchener was sold.

Q. Who were the people who came to your office?

A. I don't recall, there were quite a number of them. We have up to 15 or 18 publishers' representatives in our offices daily. I can't recall now who told me that.

Q. What did you do when you heard of the sale?

A. I called Mr. Molasky.

Q. In St. Louis?

A. In St. Louis.

Q. And this would be April 20th or April 21st, 1971?

A. Yes.

Q. Anyway it was a Friday?

A. Yes.

Q. And what did he say to you when you spoke to him on the telephone and advised him of this sale?

A. He was very surprised.

Q. Did he express anything other

than surprise?

A. Not that I can recall. He was very surprised, particularly at Mr. Cosgrove as one of the -- as General Manager. At that time all we knew was the General Manager.

Q. And why did that surprise him?

A. I imagine because Mr. Cosgrove was my predecessor.

Q. And did you know the identity of the other purchasers?

A. No, I didn't.

Q. So, the only name that you knew was Mr. Cosgrove?

A. Yes.

THE CHAIRMAN: Was the expression one of surprise at Mr. Cosgrove or would you describe it in any other way?

THE WITNESS: I imagine mainly surprise.

MR. HOLLAND: Q. Was he upset?

A. Possibly, I couldn't say.

Q. Did he appear to be annoyed?

A. I couldn't say.

Q. Was any bad lanaguage used?

A. Absolutely not.

Q. He just expressed surprise?

A. Yes.

Q. That his ex-manager had bought into an adjoining area?

A. Yes.

Q. Now, when did Metro Toronto News take over distribution of MacFadden-Bartell Publications in Kitchener?

A. July 6th, 1971.

Q. Now, Mr. Molasky told us yesterday, as I remember his evidence, that he had solicited that distributor. Did you assist in that solicitation?

A. No.

Q. Mr. Molasky also told us yesterday as I remember that he had solicited all the other North American distributors or most of them. Did you assist in that solicitation?

A. Not at all.

MR. CAMP: Were you aware that they were being solicited?

THE WITNESS: Yes, I was.

MR. CAMP: You were told by whom?

THE WITNESS: Mr. Molasky.

MR. CAMP: When?

THE WITNESS: After I heard the TV Guide franchise was gone.

MR. HOLLAND:Q.How did you know they had the TV Guide?

A. I had a call from Mr. Dick Northorp, the Circulation Manager on, I believe, it was Friday, the 20th or so of April that they were to be effective in Kitchener on May 1st.

Q. Did you agree?

A. Yes.

Q. Did you speak to Mr. Molasky before you agreed?

A. I called Mr. Molasky and informed him and he said yes, go ahead.

Q. And then you phoned Mr. Northorp back and told him you could do it, is that right?

A. Yes.

Q. Is it unusual for one geographical wholesaler to start to take over the distribution for a North American distributor in somebody else's district?

A. Not at all.

Q. Not unusual?

A. No.

Q. Can you give us any other example when this was done in Ontario?

A. In Ontario, I can't.

Q. Then, I suggest to you it would be a bit unusual if you can't give me another example in Ontario?

A. I have only been in Ontario a few months.

THE CHAIRMAN: Ask him about Quebec,

MR. HOLLAND: Q. Is it usual in Quebec?

A. Yes, it is.

THE CHAIRMAN: This was a period, therefore of one week between the time that you informed Mr. Molasky of the Kitchener sale and it

was one week later on which you had the call from Northorp. What did Northorp say to you, in general terms when he called? Did he say, "Good morning" or"Good afternoon"? What did he say to you?

THE WITNESS: He said his office had informed him that Triangle Publications would not be distributed in Kitchener and he wanted to know if we could feasibly deliver through our agency. I said, yes we could.

MR. CAMP: Didn't he know where Kitchener was?

THE WITNESS: Yes, I do.

MR. CAMP: Didn't he know?

THE WITNESS: Yes.

MR. CAMP: And you called Mr. Molasky to tell him that Triangle had sold the TV Guide?

THE WITNESS: Yes.

MR. CAMP: He was surprised when you told him about TV Guide?

THE WITNESS: He didn't say anything.

MR. HOLLAND: Q. Did he appear to know about it?

A. Quite possibly.

THE CHAIRMAN: Did he or did he not appear to you to have known about it in advance, before you informed him?

THE WITNESS: Mr. Lichtenberg may have contacted Mr. Molasky. Mr. Molasky did state that Mr. Crocker had contacted him.

MR. CAMP: Mr. Holland, could you

straighten that out for me?

MR. HOLLAND: Q. As I understand it, following this telephone conversation with the Toronto representative of Triangle, you then telephoned Mr. Molasky in St. Louis?

A. Yes.

Q. And you told me that it appeared to you that very possibly he already knew about the suggested arrangement?

A. Yes.

Q. What did he say to you which indicated to you that he had knowledge of the suggested arrangement?

A. All he said to me was "Do your best to get TV Guide into the Kitchener area".

Q. He expressed no surprise at all about this new arrangement?

A. No.

Q. And it appeared to you that he already knew about the suggested arrangement?

A. Very possibly, yes.

Q. Did it occur to you that he knew the suggested arrangement?

A. I never thought of it. Very possibly.

Q. In retrospect?

A. Very possibly.

MR. CAMP: I would like to know how it was distributed in Kitchener prior to this.

MR. HOLLAND: Q. How was TV Guide distributed in the Kitchener area prior to this?

A. Through Kitchener News.

Q. Which is the company which was being sold?

A. Yes.

MR. CAMP: Where did it come from?

THE WITNESS: Triangle Publications, shipped from their Toronto office to Kitchener.

MR. CAMP: From Toronto to Kitchener by truck?

THE WITNESS: By truck.

MR. CAMP: How did you deliver it there?

THE WITNESS: By truck.

MR. CAMP: So it made no difference.

DR. JEANNERET: The effect of this change, however, would have been to give you an entry into all the Kitchener accounts, retailers wishing to sell TV Guide and that would be pretty well all of them, on a weekly basis, I presume?

THE WITNESS: Yes.

DR. JEANNERET: This has been changed in relationship to the direct connection and the ultimate recap.

MR. HOLLAND: Q. So at this point really, by the first of June in the Kitchener area, you had TV Guide and the other publications of Triangle Publications, and you also had the publications of MacFadden-Bartell?

A. July 6th.

Q. As of July 6th?

A. Yes.

THE CHAIRMAN: I want to ask this question at this point -- it is going to be difficult, Mr. Romanez, because you find you will be -- the question occurs to me. I take it that you had no qualms, if you will, about taking TV Guide west to serve Kitchener retailers directly from Metropolitan Toronto, even though you knew

that Kitchener News was in existence and had had this contract for some time? Is that right?

THE WITNESS: That is right.

THE CHAIRMAN: I take it, therefore, you would have no qualms if TV Guide were to ask you to serve any other area that does not belong to you, for whatever reason, whether Mr. Molasky, or someone, might make an arrangement with TV Guide -- we don't know how these things happen, but suppose it did happen that TV Guide was to be distributed by you for Chatham and Windsor, or any other place, you would have no qualms about delivering it into those areas at all, would you?

THE WITNESS: Not at all.

THE CHAIRMAN: I see.

MR. HOLLAND: Q. As of the 2nd of June you had two -- the 6th of July you had two North American distributors in the Kitchener area?

A. Yes.

Q. And one of those included TV Guide, which is the prime seller, as I understand it?

A. Yes.

Q. Did you make -- we heard that Mr. Molasky solicited the other distributors in the Kitchener area. Did you at Metro News Company, make any other effort to gain further entry into the Kitchener area?

A. None whatsoever.

MR. CAMP: When you were told about TV Guide by Mr. Northrop, did he say TV Guide specifically, or did he say TV Guide and all the other publications?

THE WITNESS: He said Triangle Publications.

MR. CAMP: How many publications is that?

THE WITNESS: Two major ones and quite a few secondary ones. There are about 18 to 20 publications. I am not sure of the exact amount.

MR. CAMP: Have you a copy of their full list there?

THE WITNESS: Yes. You have the same list, I believe.

DR. JEANNERET: One of the last things Mr. Molasky told us yesterday -- a lot of very valuable information -- was that his firm was a national distributor for certain publications as well, of course, as what some companies. The publications for which you are a national distributor, do they include any important items and would you have continued to sell those in Kitchener, or would you have handled Kitchener on behalf of those periodicals directly?

THE WITNESS: We continued to sell Kitchener on those directly.

DR. JEANNERET: You always had?

THE WITNESS: Yes.

DR. JEANNERET: Would you normally distribute those to the regional wholesalers?

THE WITNESS: Yes.

DR. JEANNERET: But not in the Kitchener area, so you already had contact with Kitchener?

THE WITNESS: No, I am sorry. Through Colonial Kitchener was distributing in those areas and we just continued in this period through Colonial.

DR. JEANNERET: Therefore, Kitchener News is actually receiving through Colonial, their magazines for which you are the national distributor. Does that include any paperback books?

THE WITNESS: Mainly.

THE CHAIRMAN: Mr. Holland, this is going to be difficult right now.

Mr. Romanez, following the question that I put to you, that answer you gave, you would not have any qualms, you are skilled in this whole industry. Is it not correct that if there was an agreement made in the United States between the distributors and on Exhibit 2, they are all in the United States with the exception of one, if there was an agreement made there between the principals or the officers of those companies, the major ones, and, for example, Pierce News Company, as they obviously are with

regard to Triangle and all the other firms, is it not quite possible that a decision could be made in the United States which would provide, in effect, the ability to Metro News, or Mr. Molasky's intereststo have a complete, if you would, monopoly over the whole of Ontario?

MR. SEDGWICK: Surely, Mr. Chairman ---

THE CHAIRMAN: I will ask the questions, Mr. Sedgwick.

MR. SEDGWICK: To ask questions you should ask question, with due respect.

THE CHAIRMAN: With due respect, I know a question when I want to put it ---

MR. SEDGWICK: So do I. The speech you just made is not a question: It was a speech.

THE CHAIRMAN: It was a question.

MR. SEDGWICK: I don't see that ---

THE CHAIRMAN: We have been asked to do this and it was a very simple question.

MR. SEDGWICK: I didn't know a question could occupy so long a space of time.

THE CHAIRMAN: That is most unfortunate. Answer the question.

THE WITNESS: First, that is a very complicated question.

THE CHAIRMAN: Mr. Reporter, would you repeat the last question, please?

THE REPORTER: (Reading back):

"Mr. Romanez, following the question that I put to you, that answer you gave, you would not have any qualms, you are skilled in this whole industry. Is it not correct that if there was an agreement made in the United States between the distributor and on Exhibit 2, they are all in the United States with the exception of one, if there was an agreement made there between the principals, or the officers of those companies, the major ones, and, for example, Pierce News Company, as they obviously are with regard to Triangle and all the other firms, is it not quite possible that a decision could be made in the United States which would provide, in effect, the ability to Metro News, or Mr. Molasky's interests to have a complete, if you would, monopoly over the whole of Ontario?"

THE WITNESS: It is possible, but not likely.

MR. CAMP: How long have you been in this business?

THE WITNESS: 23 years.

(Page 2990 follows)

MR. CAMP: So you know something from your experience. We know the history of American News, in the United States.

THE WITNESS: I have worked with them.

MR. CAMP: Do you remember when Julius Garfinkle took it over and re-arranged the discount rates for all the distributors? What happened as a result of that?

THE WITNESS:

MR. CAMP: The publishers got together and broke the monopoly, didn't they? They established a whole network of independent wholesalers?

THE WITNESS: Independent wholesalers existed long before the deal with American News Company.

MR. CAMP: There is an example whereby the distributors, if you like, and/or the publishers got together and established their own operations in order to discriminate against a particular wholesaler and it was effective, was it not?

THE WITNESS: I think it was the opposite of what you are saying. American News Company was a monopoly, it could not have existed as a monopoly.

MR. CAMP: But it does prove they have the leverage and the power to affect markets and to affect wholesalers. They can break

or make a wholesaler?

THE WITNESS: Or the retailer can break a wholesaler also.

MR. CAMP: A retailer?

THE WITNESS: Very easily, by not buying from the wholesaler, a group of retailers.

MR. CAMP: In effect, this matter is an historic example whereby publishers and distributors, either in association with wholesalers or by establishing their own wholesale operations?

THE WITNESS: It is very possible.

MR. HOLLAND: Q. Getting back to Kitchener, Mr. Romanez, was any effort made by Metro Toronto News Company to solicit the retailers for publications other than those carried by Triangle and McFadden-Bartell?

A. For family reading centres only.

Q. And was it suggested in this solicitation that if the retailer took this family reading centre which, as I understand it, was the shelving arrangement supplied, that this would eliminate having to buy from Kitchener News Company?

A. Yes.

Q. I am showing to you a submission from Metro News Company to Zeher in Kitchener, dated March 3rd, 1971. Can you identify that?

A. Yes, I can.

Q. Is that such a solicitation?

A. Yes.

Q. If you will look at page 2, does that solicitation indicate that, by accepting the solicitation it would eliminate being serviced by two separate suppliers?

A. Yes.

Q. Giving you a complete full line supplied through one source?

A. Yes.

Q. And does it, therefore, indicate you were trying to raid Kitchener and take over the whole area? That is Metro News Company.

A. We were soliciting chain stores.

MR. HOLLAND: May that be the next Exhibit?

THE CHAIRMAN: That will be Exhibit No. 11.

---EXHIBIT NO. 11: Submission from Metro News Company to Zeher, Kitchener, dated March 3, 1971

MR. HOLLAND: Q. And did you have any arrangements in Toronto with any of the chain stores for the supplying of publications and paperbacks?

A. Through Kitchener?

Q. In Toronto, first, in the Toronto area did you supply, for example, Loblaw

and Dominion stores?

A. Certainly.

Q. Did you solicit those companies to get their business in Kitchener?

A. Very possibly, yes.

Q. And can you tell me any other chain store you solicited in order to get ---

THE CHAIRMAN: Does he know or does he not?

THE WITNESS: This would be handled by my sales manager, general sales manager.

MR. HOLLAND: Q. What is his name?

A. Robert McMonigle.

Q. Of your personal knowledge do you know of any chain stores that were solicited to get their business in the Kitchener area?

A. Yes, I do.

Q. What stores?

A. Solicited to get their business? It actually improved delivery to Kitchener.

Q. What stores were those?

A. Dutch Boy. The rest of them you will have to ask Mr. McMonigle.

Q. And did you get any acceptances to these solicitations?

A. No, we stopped solitation in that area.

Q. When?

A. The middle of June.

Q. That would be when this Act came before the Legislature?

A. Yes.

Q. And why, then, did you stop soliciting in the area?

A. We didn't know exactly what the Act was about. We felt it was better to find out just how the Act affected us.

MR. CAMP: You are talking about the proposed legislation?

THE WITNESS: Exactly.

MR. HOLLAND: Q. And, is it your intention at the moment to continue or to resume soliciting business in Kitchener from retailers?

A. Very possibly, yes.

Q. Is it or isn't it?

A. Well, economically when we have trucks going into the Kitchener area with TV Guide and if we can just load it instead of just publications of MacFadden it would be much better for us to go in there with a whole line of magazines. It is not worth going in with just one

line, as Mr. Molasky stated.

THE CHAIRMAN: I wonder whether it could be put to the witness if it was uneconomic to make this kind of an operation in the first place what might be the reason for taking on the TV Guide?

THE WITNESS: It is not feasible to go in with the TV Guide right now but we are not getting the maximum payload out of our trucks.

MR. HOLLAND: Q. You would just like to get more?

A. Absolutely.

Q. Would that same argument apply to other parts of Ontario not supplied by Metro Toronto News Company?

A. No, it doesn't apply.

Q. Would not it be more economic to have the whole southern part of the province?

A. In the areas we are going into we are going in with a full line of magazines now. Our vehicles can't carry any more than they are carrying.

Q. You would have to put on more trucks?

A. We would have to put on more trucks.

Q. And that would be uneconomic?

A. Not necessarily.

Q. Following that line of thought,

how is Sarnia serviced now?

A. Sarnia, right now?

Q. Yes.

A. From Sarnia.

Q. Has there been any change in the distribution set-up in that area since the purchase of Lambton News?

A. Not at present, no.

Q. Is one anticipated?

A. Yes, it is.

Q. And when do you expect to bring this change about?

A. At the end of July.

Q. And what change are you bringing about?

A. We are going to merge Sarnia with London for distribution purposes.

Q. And what effect will this have on the present system in Sarnia? Will you cut down the number of people and hire more people in London?

A. Yes.

Q. And is it anticipated that London would be supplied from Toronto?

A. Eventually, it is very possible.

Q. Would that mean that London would then be closed down and that Sarnia and London would be operated direct from Toronto?

A. Very possibly.

Q. And when is it expected that

this could be done?

A. As soon as it is economically possible.

THE CHAIRMAN: I recall some figures to the effect that the London establishment of employees at the time of acquisition was about 40-odd?

MR. HOLLAND: This is Belleville, Mr. Chairman.

THE CHAIRMAN: Oh, is it Belleville?

MR. HOLLAND: Yes.

Q. Now, in connection with Belleville, as I understand it, that is already being supplied direct from Toronto?

A. Yes.

Q. And yesterday there was some evidence that there had been a drop in employment there from 40 to 7?

A. I believe it was 30 to 7.

Q. How many employees are there now in Belleville?

A. I believe 3.

Q. And is it envisaged that the same sort of drop-off in employment will eventually occur in Sarnia and London?

A. Yes. Now, in London?

Q. You wanted to add something, you wanted to say something?

A. Yes.

Q. Go ahead.

A. On April 28th -- I am sorry, on May 19th -- at Metro Toronto we had 233 employees. When we took over Belleville on June 2nd one week later we had 272 employees in Metro Toronto News Company. Today we have 288 in Metro Toronto News Company. The history is over here and it will show you that every employee that we dropped at Belleville we more than added at Metro Toronto News Company, so we did not lay off any employees.

Q. You laid them off in Belleville but hired somebody else in Toronto?

A. We shuffled them around.

Q. Did you bring them from Belleville to Toronto?

A. Some of them we did. We hired supervisors, we hired Mr. Colebourne's sons. We have a district manager in each area, we have a district manager in Peterborough, Belleville and Oshawa, all former employees of Upper Canada News Company. We took the overhead to Metro Toronto.

Q. When you transport publications from Metro Toronto to one of the outlying areas, for example Belleville, do you charge the retailer a transportation charge?

A. The same as we do in Toronto.

Q. The same charge?

A. As a matter of fact less.

Q. Would you explain that?

A. In the Toronto area we have a

service charge which is higher than the service charge in the Belleville area.

Q. And yet when you ship material to Belleville you have to send it by truck and you would have to send it about 100 miles?

A. They are our own trucks, our own drivers.

Q. And yet you charge less for deliveries to Belleville than you do to Toronto?

A. We charge the same thing as Upper Canada News Company charged. We use their service charge.

MR. CAMP: There is a service charge?

THE WITNESS: Yes.

MR. CAMP: Based on what factor?

THE WITNESS: On handling, and we have to handle returns. It is based on handling and also the cost of the vehicles, the cost of delivery.

MR. CAMP: This is not affected?

THE WITNESS: Not really.

MR. CAMP: Would you explain that a little further, as to how you determine whether your price will be lower or higher in terms of handling?

THE WITNESS: We assumed Upper Canada's distributing charge and charge the same charge as they.

THE CHAIRMAN: How much is that?

THE WITNESS: 50 cents on the dollar.

THE CHAIRMAN: 50 cents on the dollar for what?

THE WITNESS: Delivery.

THE CHAIRMAN: Based on?

THE WITNESS: A week's delivery.

DR. JEANNERET: You have much higher service charges than that?

THE WITNESS: In Toronto it is $1.75.

MR. CAMP: It is $1.75 in the Toronto area?

THE WITNESS: Not to everyone.

MR. CAMP: Higher or lower?

THE WITNESS: Lower, no one is higher.

MR. CAMP: $1.75?

THE WITNESS: Yes.

MR. CAMP: For example, what would be the cost to Kitchener?

THE WITNESS: Presently there is no service charge in Kitchener.

MR. CAMP: So, the cost of handling is absorbed. Why?

THE WITNESS: It will be now that we have MacFadden. There will be a 50 cents service charge.

MR. CAMP: A 50 cents service charge in Kitchener and $1.75 in Toronto?

THE WITNESS: We handle fewer magazines in Kitchener. I believe Kitchener News also had a service charge.

THE CHAIRMAN: In the Belleville area, why do you not put the service charge in the position where it is similar to that of Toronto?

THE WITNESS: That is a difficult question to answer.

THE CHAIRMAN: Do you think you will?

THE WITNESS: It all depends on the economics of delivering into that area.

THE CHAIRMAN: Well, if you were charging $1.75 to somebody in Metropolitan Toronto, which is your base of operations, can you tell me how the economics of serving Belleville in comparison with Metropolitan Toronto can be any other than higher?

THE WITNESS: There is no overhead in Belleville.

THE CHAIRMAN: You have got how many employees now in Belleville?

THE WITNESS: Three, they are mainly supervisors.

THE CHAIRMAN: You have some overhead?

THE WITNESS: Very little.

MR. CAMP: Apprentices and offices?

THE WITNESS: Not a building, no, just an office and the district supervisor has an office. The supervisor has an office in his home.

THE CHAIRMAN: Are you telling us that the overhead, since you are operating out of

Metropolitan Toronto into these areas, is not equalized over your entire operation? Are you telling us that the service charge which you can justify is $1.75 in Toronto the service charge of an equal amount at least for taking the books and material from Metropolitan Toronto to Belleville is not comparable to the $1.75?

THE WITNESS: As I explained to you this has to be studied. I should think it would be.

MR. CAMP: Just to clarify something. Who furnishes the Daily Racing Form?

THE WITNESS: Triangle Publications.

MR. CAMP: Who is the distributor?

THE WITNESS: Triangle Publications. In Toronto we distribute 35,000 copies a week on track days and 11,000 on off-track days.

MR. CAMP: 46,000 copies?

THE WITNESS: No.

MR. CAMP: I thought you said 35,000 plus 11,000?

THE WITNESS: No, 35,000 when the races are on and 11,000 when they are not.

MR. CAMP: You mean when the races are not on in Toronto?

THE WITNESS: The sale drops.

MR. CAMP: You are still wholesaler?

THE WITNESS: Yes.

MR. CAMP: You are the wholesaler for Garden City and all the tracks in Ontario?

THE WITNESS: Yes.

MR. CAMP: If you are the wholesaler, how many copies of Modern Bride do you sell?

THE WITNESS: About 2,000 copies.

MR. CAMP: Mr. Molasky, I guess it was, was kind enough to give us a list of his publications and he has here the magazines which are the best sellers and he added TV Guide, Modern Bride, Popular Electronics, Stereo Review; the Daily Racing Form is not on here.

THE WITNESS: What list do you have over there? You don't have a full list.

MR. CAMP: Well, it is obviously not a full list because the Daily Racing Form is not on it.

THE WITNESS: There are no newspapers or tabloids on that list. National Inquirer, Midnight, Hush, Tab. You name them and we have copies of them.

MR. CAMP: Are those Canadian publications?

THE WITNESS: Some of them are, yes.

THE CHAIRMAN: It is printed in Winnipeg.

MR. HOLLAND: Q. On the Racing Form, who distributes the Racing Form in Kitchener?

A. Kitchener News.

Q. Why is that not distributed by Metro Toronto News since you have other publications?

A. I can't answer that. You would have to ask Mr. Lichtenberg.

MR. CAMP: There must be someone at the track who takes the Daily Racing Form from Toronto to Kitchener.

THE WITNESS: Maybe there is.

MR. HOLLAND: Q. The answer is it has to be delivered daily, is that it?

A. I really couldn't tell you.

MR. CAMP: As you said before, you have TV Guide and all the publications, you mean you have all the publications less one?

THE WITNESS: The Racing Form comes through McMurray Publications, which is a separate company and has no connection with Triangle that I am aware of.

MR. CAMP: McMurray Publications?

THE WITNESS: Yes.

MR. CAMP: I asked you before about the Daily Racing Form and you said it was Triangle Publications.

THE WITNESS: Directly, they are.

MR. CAMP: What is the name of the company?

THE WITNESS: McMurray Publications in Toronto.

MR. CAMP: Is that an independent organization, independent of Triangle?

THE WITNESS: I can't answer that. You would have to ask someone else.

MR. HOLLAND: Q. You say that the Daily Racing Form is delivered by McMurray Publications?

A. They are the national distributor.

Q. How about TV Guide? Do they distribute TV Guide as well?

A. Triangle does. They are the publishers of TV Guide.

Q. But McMurray Publications is the publisher of TV Guide, so do you pick up your TV Guides and your Daily Racing Forms at the same place?

A. They are not published at the same time.

Q. But from the same location?

A. Same location.

Q. Same location. Now, then, to get back to June 10th, 1971, that meeting at the Inn-on-the-Park we heard about yesterday in the afternoon, Mr. Molasky's hotel room, I think you were present at that time?

A. Yes, I was.

Q. How long did the meeting take?

A. Approximately half an hour.

Q. Who else was present?

A. All the individuals names yesterday.

Q. And did Mr. Molasky say if the people from Kitchener moved into Toronto or London or Sarnia the way Toronto had moved into Kitchener, he would raid Ottawa, Hamilton, Brantford, St. Catharines and Vancouver?

A. Not in those words, no.

Q. What did he say?

A. We had the franchise for Triangle and McFadden in Kitchener and rumours were out that they were possibly moving into our area.

Q. Who would move into your area?

A. Kitchener would move into our area. I believe Mr. Molasky stated, the way he testified yesterday, that if they came into our area, we would have to protect our area and move into theirs. This is business.

Q. You had already moved into theirs in Kitchener, hadn't you?

A. All we had was the Kitchener franchise. We solicited but didn't move in.

Q. You were trying to move in?

A. We didn't get a chance.

Q. And solicited the other franchise?

A. Yes.

Q. How did you think that Kitchener

would be able to move into you in Toronto, or move into your area in Toronto? Would it be by getting the distributors to switch to them?

A. It is very possible.

Q. Do you think that any distributor would have given them the franchise in Metro Toronto?

THE CHAIRMAN: Is this witness really serious in what he said, it was very possible the Kitchener distributors would switch to them? Are you serious about that?

THE WITNESS: Yes, I am.

THE CHAIRMAN: Which distributors do you think that would be?

THE WITNESS: If they moved into our area, they would have magazines around the City which one of the people owns in Kitchener and they could have come into the area with all magazines.

MR. CAMP: They could move in here with TV Guide?

THE WITNESS: Yes, they have TV Guide.

THE CHAIRMAN: What would Triangle have to say about that, if the owners of this area complained to TV Guide?

THE WITNESS: I don't know.

THE CHAIRMAN: You wouldn't hazard a guess?

THE WITNESS: No, I wouldn't.

DR. JEANNERET: Are you suggesting, Mr. Romanez, that a wholesaler theoretically could decide arbitrarily to set up a branch operation 100 miles away from your area without talking to distributors or anybody else and get away with it?

THE WITNESS: No, he couldn't.

MR. CAMP: The gross revenues of this corporation were what?

THE WITNESS: I don't have any idea.

MR. CAMP: I think it is a matter of record, isn't it?

MR. HOLLAND: Of Kitchener?

MR. CAMP: Yes.

MR. HOLLAND: $1,320,000.

MR. CAMP: $1,320,000, less McFadden and less Triangle, would be something less. They would take that one million-odd dollar business if they came into here and cleaned out $10,400,000 in business. Do you think that is quite possible?

THE WITNESS: It is possible but unlikely.

MR. CAMP: That is better. What was the apprehension, really, about Kitchener flexing its muscles in Metro News' area? What could they come into Toronto with?

THE WITNESS: The same thing we were doing in Kitchener. The same merchandise

we were distributing in Kitchener, they could distribute in Toronto.

MR. CAMP: You say that is not very possible?

THE WITNESS: They could try.

MR. HOLLAND: Q. Was it not really a threat that, unless Kitchener was sold, they would raid Ottawa, Hamilton, Brantford, St.Catharines and Vancouver?

A. Absolutely not.

Q. Did Mr. Molasky, at that meeting, say he wanted to buy Hamilton, Brantford, St.Catharines and Kitchener?

A. Yes, he did.

Q. And did Mr. Molasky also say that he would pay the same price that the purchasers paid for Kitchener because they had lost two North American distributors which would not pay?

A. He said the price could be negotiated.

THE CHAIRMAN: Are you aware that is the same business that Mr. Molasky offered to pay whatever the price was, the Cosgrove group had offered, but he didn't know, plus $50,000 a few weeks before?

THE WITNESS: Yes, I know that.

MR. HOLLAND: Q. But that offer, obviously, had been withdrawn?

A. This I don't know.

Q. You have just said that the price was to be negotiated?

A. Exactly, but whether -- this other was between Mr. Molasky and the negotiators, the $50,000 was between them.

Q. I want to ---

MR. CAMP: Just to clarify, Mr. Witness, did you hear Mr. Molasky suggest or say the district of Kitchener was worth less?

THE WITNESS: Yes.

MR. CAMP: So the negotiations would be at a lower price?

THE WITNESS: This I wouldn't know.

MR. HOLLAND: Q. That is the inference you drew, wasn't it?

A. Yes, it was.

Q. Mr. Romanez, I want to change the subject again a little bit. As I understand it, Metro Toronto News Company, in effect, has a monopoly in the Toronto area in connection with the supply of periodicals and paperbacks?

A. I don't agree with your word "monopoly".

Q. Is there anyone else in Metropolitan Toronto?

A. Yes, countless other people in the area.

Q. Supplying the same material as you supply?

A. In some instances, yes, quite

a number of instances.

THE CHAIRMAN: I think we should find out what the witness is talking about here because this is important. Could he explain to us what these other publications are that are competitive? Is somebody else supplying TV Guide?

MR. HOLLAND: Q. Can you give us the names of your competitors in Metropolitan Toronto area?

A. Do you want to break it down into paperbacks and magazines?

Q. Let us start ---

MR. CAMP: Are there many wholesalers in Toronto who share with you the rights to publications of these North American distributors, Triangle, Ace News?

THE WITNESS: Magazine-wise, no. Paperback-wise, yes.

MR. HOLLAND: Q. So you have a -- Metropolitan News Company has a monopoly in the Toronto area for magazines?

A. It is not a monopoly.

Q. For these distributors?

A. It is still not a monopoly.

Q. Would you explain?

A. Subscription companies are coming into Toronto, copies are coming into Toronto. People are receiving subscriptions. We are competing against profit in the stores.

Q. But there are no other wholesalers supplying magazines in the Toronto area?

A. These particular magazines, no, wholesalers, no.

Q. All right. Now, then, having established that, as I understand it, Metropolitan Toronto News Company supplies certain retailers, but certain other retailers obtain these magazines or publications direct, is that correct?

A. Yes.

THE CHAIRMAN: I understand, too, the reason no other wholesaler exists in the Toronto market for all these distributors that they represent, is that because the distributors refuse to do this for any other wholesaler in the Metropolitan Toronto market?

MR. HOLLAND: Q. Do you know?

A. It is not feasible to have two wholesalers in one area when merchandise is returnable. You can't have two suppliers supplying the same store with the same merchandise.

MR. CAMP: But they do that in Kitchener.

THE WITNESS: We go in with a specific line.

MR. HOLLAND: Q. The answer is, as I understand it, that the distributors will not supply any other wholesaler in the Toronto area?

A. This, I couldn't say. Economically they wouldn't, no.

DR. JEANNERET: You are talking exclusively about periodicals for the moment, here.

THE WITNESS: Yes.

MR. HOLLAND: Q. Are there any book stores, if we can call them that, in Toronto to which you do not distribute these periodicals, but who get their periodicals direct from the distributors or the publishers?

A. Other than Woman's Day, Family Circle and those.

Q. Let us switch for the moment to paperbacks. As I understand it, you supply paperbacks to certain outlets, retail outlets?

A. Right.

Q. And not to other retail outlets?

A. That is right.

Q. Can you give us an example of a retail outlet that you do not supply with paperbacks?

A. Yes.

Q. Would you give us that example?

A. Coles.

Q. How do Coles get their paperbacks?

A. I imagine from the publishers.

Q. Can you give us an example

of a retail outlet you do supply in Toronto, I mean?

A. Eaton's.

Q. If Eaton's wanted to switch and buy direct from the publisher, could they do so?

A. Yes, they could.

Q. How would they go about doing it?

A. Cancel supplies from us and apply for delivery from the publisher.

Q. And could the publisher deliver to them, from your knowledge of the business?

A. If it was economical for them, they would, if the volume was there.

DR. JEANNERET: Could you generalize on that question and not just use Eaton's as an example, bookstores generally, who are accounts of Metro, have they the privilege to switch?

MR. HOLLAND: Q. You heard the question?

A. I heard the question. Provided it was economical for the publisher to come in, they would do so.

DR. JEANNERET: If the publishers were already here servicing a good proportion of shall we say, bookstores and at 40 per cent, let us say -- contradict that if you wish -- and you were supplying other accounts, old accounts if you like at 30 per cent, do these latter accounts have the privilege of switching or do you have an agreement with these publishers that makes this impossible?

THE WITNESS: We have no agreement.

DR. JEANNERET: Do you know of cases where efforts have been made to switch?

THE WITNESS: Countless.

DR. JEANNERET: All successful?

THE WITNESS: Mostly successful. We fight it as hard as we can but we very seldom succeed.

DR. JEANNERET: You would be the biggest customer of these publishers?

THE WITNESS: Yes.

DR. JEANNERET: So, your fighting would have a good deal of fight to it?

THE WITNESS: Not necessarily.

MR. HOLLAND: Q. How would you fight?

A. By attacking the national

distributor who is handling that publisher for going direct. It is to his interest as well as to ours not to do that. If we are not supplying the service to the customer and the customer is unhappy and we can't supply him we can't blame him for going direct but if we are giving him service and the advantage of carrying their stock in our warehouse, he has no reason to go direct unless we can't service him properly.

THE CHAIRMAN: I suppose the way you could fight is to say to the national distributor of paperbacks or the publisher or whoever you are dealing with, "If you make a switch we won't carry your books"?

THE WITNESS: We have never said that, by no means.

DR. JEANNERET: I put it to you, Mr. Romanez, if this is in order -- and we will have to adduce evidence on this point in due course, but I am now giving evidence myself -- that very strenuous efforts have been made by at least one and possibly others as well, one very major book account, namely, University of Toronto bookstores, did switch and this included visiting the publishers in New York and soliciting, to use your phrase, them to allow purchase directly from the publishers' representatives in Toronto and in all cases practically, this was turned down. I think there are a couple of exceptions where changes have been allowed and these requests, of

course, bear on the interests of the ultimate consumers who are students in this case because there is a difference between purchasing at 30 per cent and 40 per cent locally. Do you have any knowledge of this?

THE WITNESS: Not at all.

MR. HOLLAND: Q. Now, if a bookstore could purchase direct, would they get it at a better rate than they can get it from you?

A. Absolutely.

Q. They would?

A. Yes.

Q. What is your cut, if I can put it that way, for a distributor?

A. It varies from publisher to publisher.

THE CHAIRMAN: What is the average, what do you look for? What do you say you want?

THE WITNESS: The average is 46 per cent.

MR. HOLLAND: Q. So, you get the paperback at 46 per cent off, is that right?

A. That is right.

Q. And then at what percentage off do you supply it to the retailer?

A. 30 per cent.

Q. So, you pick up, on the average, 16 per cent for your service?

A. Yes.

Q. And then you charge a service

charge on top?

A. Not for paperbacks.

Q. Not for paperbacks?

A. No.

Q. Nothing for paperbacks?

A. Nothing whatever.

Q. Are they not delivered at the same time as the periodicals?

A. Not necessarily.

Q. Are they sometimes delivered at the same time?

A. If they are, they are part of the package.

Q. And a service charge is made for the periodicals?

A. The service charge is made for the package, it includes everything.

Q. It includes the paperbacks?

A. Yes.

DR. JEANNERET: Would you discuss, Mr. Holland, the question of protection? I understand they secure full protection from the publishers on what they purchase in the way of paperbacks.

MR. HOLLAND: Insofar as returns are concerned?

DR. JEANNERET: Yes.

THE WITNESS: Everything we handle is fully returnable.

DR. JEANNERET: And everything you sell

you will accept back too, you take it back as part of your services?

THE WITNESS: The day after delivery.

DR. JEANNERET: When you return, you prefer, am I correct, to return as you do on periodicals tearing off the covers.

THE WITNESS: From the retailer?

DR. JEANNERET: No, when you return to the publisher?

THE WITNESS: It depends on the publisher.

DR.JEANNERET: At the publisher's option?

THE WITNESS: Yes.

DR.JEANNERET: In the case of paperbacks I would be surprised if the publisher if he were located in Toronto would prefer to have his covers torn off.

THE WITNESS: Frequently they do.

DR. JEANNERET: They do?

THE WITNESS: Yes.

THE CHAIRMAN: I wonder if we might recess for 15 minutes at this time?

--- Recess.

THE CHAIRMAN: Ladies and gentlemen, before we commence again with the examination of Mr. Romanez who is at bat, I wish to make it clear that there are several other witnesses from whom we wish to hear, that it is obvious we are not going

to conclude these proceedings today so the Commission has allotted the whole of next week commencing on Monday morning at ten o'clock in the same place to carry on with these hearings and we propose to go on until they are finished next week. I thought I might make this statement to you now so those who wish to make plans therefor can do so.

MR. HOLLAND: Q. Just a few points, Mr. Romanez. You were talking at one time this morning about having to put on extra trucks. Now, does Metro Toronto News Company own its own trucks or does it rent its trucks?

A. We lease all our trucks.

Q. So that when you talk about putting on extra trucks, all you would have to do is lease more trucks?

A. Exactly.

THE CHAIRMAN: Do they lease the trucks and the drivers come with the trucks or are the drivers employees or are they contractors?

THE WITNESS: The drivers are employees of the Metro Toronto News Company.

MR. HOLLAND: Q. So, if you wanted to be fair to put on another truck you would rent the truck and hire a driver?

A. Exactly.

Q. And that would be a fairly easy thing to do, I would think?

A. I am glad you said that.

Q. I want to switch and ask you a few questions about the service. How much does Toronto News Company provide to its retailers, specifically in the Toronto area? The publications that you deliver, of course, all have dates on them, I suppose?

A. The majority of them.

Q. Now, let me start off with TV Guide. Is TV Guide delivered on the same day to all your Metropolitan Toronto retailers and I am specifically directing your mind to Mac's Milk Company in this connection?

A. It takes two days to effect delivery.

Q. It takes two days?

A. Yes.

Q. Does Mac's Milk Company, in fact, get TV Guide before your other retailers in the Toronto area?

A. No, they do not.

Q. When does Mac's Milk Company get TV Guide, what day of the week?

A. The same day -- if we are deliver on Monday and the store over here gets a delivery, Mac's Milk gets it at the same time, depending on the routing of the truck.

Q. So, that adjacent stores would get TV Guide on the same day?

A. Exactly.

Q. No matter if one was Mac's

Milk Company and one was some other store?

A. Exactly.

Q. No question about it?

A. No.

Q. Now, does Metro Toronto News Company employ jobbers in Toronto and by that I mean someone who is employed to deliver to certain retailers?

A. Yes, we do.

Q. Is this on a contract basis?

A. No, it isn't.

Q. What is the arrangement with the typical jobber?

A. He is an employee of Metro Toronto News Company and he gets a percentage of sales instead of a salary.

Q. He gets a percentage of sales instead of a salary?

A. Right.

Q. And then are certain retailers allotted to a certain jobber?

A. Yes, there are.

Q. And that is by Metro Toronto News Company, is it?

A. Yes.

Q. Metro Toronto News Company will say to jobber A, "You are going to supply retailers B, C, D, E and F?

A. Not necessarily. He can dig up his own accounts.

Q. And he gets a percentage of sales?

A. Exactly.

DR. JEANNERET: They would geographically overlap other accounts, I would presume?

THE WITNESS: Exactly.

DR. JEANNERET: So, they might be delivered on different days across the street from each other or even next door to each other?

THE WITNESS: Exactly.

MR. HOLLAND: Q. As I understand it, these jobbers would supply the smaller retailers, the smoke shops and that sort of thing?

A. Very small retailers, yes.

Q. Metro Toronto News Company would supply the larger retailers and the jobbers would supply the very small retailers?

A. Exactly.

Q. And do you have a cut-off point in sales so that if a retailer gets to a certain level of sales that retailer will then be supplied direct by Metro rather than through a jobber?

A. Not cut and dried,

Q. What do you mean by that?

A. Well, if it becomes physically impossible for a jobber to service him the jobber will request us to put him on Metro service. If the volume builds up to a point where a jobber no

longer can handle him, the jobber works on a cash basis and the bigger he gets the harder it is for the jobber to handle.

Q. Can you give us any sort of idea in dollar volume of the cut-off point for most retailers?

A. As I said, it is not cut and dried.

Q. Can you give the Commission some idea of the dollar volume?

A. $50 and under for a jobber.

Q. And the balance would be supplied direct by Metro Toronto News Company?

A. Yes.

DR. JEANNERET: Mr. Holland, this is very interesting. I don't quite understand how you can afford to bring in a jobber between you and the retailer for the small business and find the extra profit that he must have. Just comment on this. Obviously you do.

THE WITNESS: I would just like to add, if it was not for the jobber service the smaller retailers would be uneconomic to service and the other wholesalers are not servicing these small accounts. We are hoping in Metro Toronto to supply magazines for all retailers, regardless of size. If the retailer wants one magazine or two magazines or three magazines it is uneconomical to service him, the rest of it isn't.

DR. JEANNERET: I am not perfectly clear

why.

THE WITNESS: Well, he doesn't have our overhead. He is working strictly on the seat of his pants. All he has is his truck, he goes out and delivers.

DR. JEANNERET: He is your employee?

THE WITNESS: He is our commission employee.

DR. JEANNERET: But he is providing his own facilities?

THE WITNESS: Exactly. To clarify this, if we have five jobbers with 500 accounts, as far as we are concerned we have five large accounts instead of 500 individual accounts.

MR. HOLLAND: Q. How often would Metro Toronto News Company service the average retailer where you are servicing direct?

A. Two or three times a week.

THE CHAIRMAN: Is this in Metropolitan Toronto? How about the outlying places you are now serving?

THE WITNESS: Exactly the same.

THE CHAIRMAN: Two or three times a week?

THE WITNESS: Yes.

MR. HOLLAND: Q.How about the small retailers through a jobber, would that be once or twice a week, or more or less?

A. Once or twice and possibly three times a month, depending on the jobber.

Q. If it is only once a week, I suppose some of these magazines with dates on them would get pretty stale?

A. No. Dated magazines they would get the same time as anybody else.

Q. That would require practically a daily delivery, wouldn't it?

A. Not necessarily. If we are talking of weekly magazines, monthly magazines, a day on either side would not make any difference.

Q. Yes. Now, specifically, do you know Mr. Bodken who operates a smoke shop at 48 King Street West?

A. No.

Q. Our information -- and we have to call evidence on this, Mr. Chairman -- would indicate that the Financial Post, for example, is available to newsstands on Thursday of each week but Mr. Bodken can only get his delivery on the following Wednesday. By that time the Financial Post is six day's old.

A. That is an individual case which I would have to study.

Q. To switch from that a little bit, these retailers who are supplied by jobbers, do they have any choice over the paperbacks that they purchase, or are they just given an allotment?

A. The same choice of any Metro Toronto News Company dealer.

Q. Which is?

A. They place their orders with us and there is a standard delivery.

THE CHAIRMAN: What is a standard delivery?

THE WITNESS: Automatic releases.

THE CHAIRMAN: In other words, you make the selections and just put them on the shelves?

THE WITNESS: We don't put them on the shelves, the dealer puts them on the shelves.

MR. HOLLAND: Q. I have a form of account dated July 1st, 1971, Metro Toronto News Company. Do you recognize that form of account?

A. Yes, I do.

Q. At the bottom right-hand corner would you read that, please?

A. "Novel assortment". It lists price and contents of the paperbacks.

Q. That is a prepackage of novels?

A. Exactly.

Q. And the total cost is $44.90? It is printed as that?

A. That is right.

Q. So the retailer would have no choice at all?

A. The retailer has a choice of refusing that delivery or submitting a separate order for each item. He has a choice of accepting it either way. He can submit an order weekly for his books.

MR. HOLLAND: Could this be the next Exhibit?

THE CHAIRMAN: Exhibit No. 12.

---EXHIBIT NO. 12: Account of Metro Toronto News Company dated July 1, 1971

MR. HOLLAND: Q. I just notice on Exhibit 12, again down at the bottom right-hand corner there is a space for a service charge and also transportation charge.

A. It is either/or.

Q. I see. Will you explain that?

A. It is a galley account. It would be transportation charge or a country account. If it is a city account, it is a service charge.

Q. Now, in prepacking these paperbacks, is any consideration given to Canadian paperbacks, paperbacks published by Canadian publishers?

A. Would you qualify that, please?

Q. How do you choose the paperbacks that you are going to put in this prepacked package?

A. There are not a lot of Canadian paperbacks.

Q. You mean there are none?

A. You name some for me.

Q. You are the expert.

A. There are no Canadian mass market publishers.

DR. JEANNERET: You exclude Harlequin?

THE WITNESS: Harlequin ---

DR. JEANNERET: How about the McLellands Canadian best-seller library?

THE WITNESS: It was concluded about three years ago. This was as a result of -- they would not accept the mass market-type of operation.

DR. JEANNERET: Explain that, if you will?

THE WITNESS: Well, due to the small Canadian turnover, they could not -- if you are publishing in Canada 1000 copies of a book, you can't sell 10,000 or 15,000 and make any money. If you publish 100,000 or 150,000, then you can use mass market methods.

MR. CAMP: Did they solicit you, so to speak?

THE WITNESS: Yes.

MR. CAMP: You were not satisfied with their terms?

THE WITNESS: We were satisfied with the terms, yes.

THE CHAIRMAN: This was when you were in Montreal?

THE WITNESS: We were very sad when McClelland and Stewart went out of mass market printing.

THE CHAIRMAN: Are you saying, to your knowledge, there are not paperbacks being published or printed in Canada?

THE WITNESS: Other than a small, very minor company.

THE CHAIRMAN: Which is that?

THE WITNESS: Bodero Editions in Montreal. They are being sold through newsstands on a mass market-type of distribution.

THE CHAIRMAN: They are being offered to distributors?

THE WITNESS: That is right.

THE CHAIRMAN: Have you had any paperbacks, Canadian paperbacks, offered to you in your capacity as general manager of Metro Toronto News, since you have been here?

THE WITNESS: Yes.

THE CHAIRMAN: What have they been?

THE WITNESS: Within the past three months?

THE CHAIRMAN: Yes.

THE WITNESS: Gem Joke Books, which are Canadian. We had one called "How To" on racetracks, which I accepted.

THE CHAIRMAN: Do you know who the publisher of that was?

THE WITNESS: I am afraid -- I believe the publisher is in this room, but I don't want to give the publisher's name.

THE CHAIRMAN: Any others?

THE WITNESS: None that were offered to me, none of them solicited me.

DR. JEANNERET: I think you possibly know the answer to this but it would be helpful for the record if you would briefly explain what constitutes a mass market paperback, presumably size and quantities and so on, but as far as price, discount, would you just comment on the distinction between it and what is commonly called the quality paperback?

THE WITNESS: Something that is geared to the general public, the general,

everyday man in the street will buy?

DR. JEANNERET: Because of price or content?

THE WITNESS: Because of content.

DR. JEANNERET: If it turns entirely on that, I am surprised at some of the books that find their way into the mass market lists, using an example, if I may, of McLuhan's the Gutenberg Galaxy. You don't refuse books on the ground of content in the mass market?

THE WITNESS: Absolutely not.

MR. HOLLAND: Q. Now, then, going on to magazines, Canadian magazines, looking at the last Exhibit, if I may, this Exhibit appears to list certain magazines. Are there any Canadian magazines on that list?

A. Yes there are.

Q. Would you point them out?

A. You have Midnight, Hush, Justice Weekly.

MR. CAMP: I thought we established Hush as not a magazine.

THE WITNESS: It is a tabloid, a Canadian publication.

THE CHAIRMAN: You had Midnight and Hush, and what else?

MR. HOLLAND: Justice Weekly.

THE WITNESS: Tab.

MR. CAMP: I thought that was a soft drink. (Laughter)

THE WITNESS: Harlequin books, Canadian publication. You notice this list is separate from this list. I haven't come to it yet. Financial Post, Northern Miner.

MR. HOLLAND: Q. There is a box opposite each of these names so that the retailer can put in the quantity?

A. No. This distribution is made up and delivered with the quantity on it. It is a predetermined quantity.

Q. It is a predetermined quantity. Is there any box for McLean's or Saturday Night?

A. Absolutely, depending on the delivery.

Q. On here?

A. That is only one delivery. We do two of those a week.

Q. You mean that the other form would be different, have different magazines?

A. Absolutely. Every form has different magazines. It will take 8 forms per month and each one has different magazines. That is only one delivery. We distribute 1000 magazines a month.

Q. And do you have a form with those two magazines listed?

A. Countless forms with those magazines listed, yes.

Q. I see.

THE CHAIRMAN: Mr. Holland, in

connection with the jobbers and their own direct employees who are on salary, can we deal with jobbers for a moment and can you explore with the witness what service it is the jobber performs in-store for the retailer, if anything?

THE WITNESS: Yes. I can clarify that. Instead of going through a regular process where the dealer has to wait for his credit to appear on the statement, he immediately pays the dealer and settled the account right in the store.

THE CHAIRMAN: Is that all he does?

THE WITNESS: Yes, and also he is working for himself and it is to his advantage to give his dealer the best possible service.

THE CHAIRMAN: Does he do anything for the retailer in terms of putting the magazines on the racks in the particular locations?

THE WITNESS: That is his prerogative. I doubt very much that he has the time.

THE CHAIRMAN: He doesn't have time?

THE WITNESS: No.

THE CHAIRMAN: You don't know if the jobbers put the most attractive or most saleable -- do you know or don't you?

THE WITNESS: I know that they don't.

THE CHAIRMAN: They just take the material in and walk out?

THE WITNESS: Yes.

THE CHAIRMAN: That is the jobber. What about your own direct employees who are servicing your other accounts, other than the jobbers, what do they do in these retail stores? Are not some of these stores,or any of them, partial as to where a particular periodical should go?

THE WITNESS: Chain store only, such as Loblaws, family reading centres.

THE CHAIRMAN: The only place where Metro News puts the magazines on the racks is the family reading centres?

THE WITNESS: Yes. The rack is labelled, according to the magazines.

THE CHAIRMAN: Who prepares the authorized list?

THE WITNESS: The chain store buyers.

THE CHAIRMAN: Who makes the selection as to what magazine should be tabbed for a particular position in the rack?

THE WITNESS: Marketability, profitability.

THE CHAIRMAN: . Who makes that decision?

THE WITNESS: The store.

THE CHAIRMAN: Does Metro News

make an assessment of the profitability of each magazine and pass it on to Loblaw's?

THE WITNESS: We do something about the profits for that particular store. We have to produce the profits for that particular store.

THE CHAIRMAN: According to your own computation, which of the magazines is most profitable, that is, according to your authorized list as you call it, how do you translate that authorized list which you have in your hand that you have prepared, how do you take that list and have it translated into a position on the rack? Do you understand what I am saying?

THE WITNESS: Yes, I do.

THE CHAIRMAN: Tell me how you do that.

THE WITNESS: It is many years of merchandising experience. To explain that a little bit better, you have groupings on the rack, you have ladies' magazines together, movie magazines and men's magazines. The rack is set up not in any particular shape or fashion because one magazine is more important than another. We set it up for merchandising purposes.

THE CHAIRMAN: Who set it up?

THE WITNESS: Metro Toronto News Company originally.

THE CHAIRMAN: Now, who amends the set-up? If you think something has to be changed, who changes it?

THE WITNESS: Provided it is not producing profits, yes.

THE CHAIRMAN: So, in these retail outlets you, in fact, through your knowledge and skill and your analysis of the market and so forth, indicate and, in effect, control, which magazines go where on the racks based on --

THE WITNESS: No.

THE CHAIRMAN: You don't?

THE WITNESS: We label the magazine rack and suggest a spot for a magazine but we do not put the magazines up. The retailer still has the final say on where he is going to put that

magazine. We suggest a spot on the rack.

THE CHAIRMAN: Sort of like a suggested retail price?

THE WITNESS: Yes.

THE CHAIRMAN: So, what happens if I am a retailer and I go around and change the labels or something because I don't like them. What do you do about it?

THE WITNESS: Absolutely nothing.

DR.JEANNERET: Profitability then is the criterion?

THE WITNESS: Exactly.

DR. JEANNERET: Not only as to location but as to what you are to provide for a given outlet in a particular package unless they specify something else. Generally speaking, profitability is your criterion?

THE WITNESS: Exactly.

DR. JEANNERET: How does this make room for Canadian materials? They might be crowded out by reason of profitability or does policy come back in here?

THE WITNESS: I think you would probably have to call on Mr. Sedgwick to see if I can produce a letter from a Canadian magazine that we are just going to handle and how we are going about getting approval for it.

THE CHAIRMAN: I will help you with that. Will you produce the letter, please, unless there is some question of privilege?

MR. SEDGWICK: If we have it, we will certainly produce it.

DR. JEANNERET: Our questions are not suggesting anything except that we want to get information.

THE WITNESS: Exactly. Shall I read this?

MR. SEDGWICK: Read it.

THE WITNESS: A new Canadian magazine is coming on the market called Fuddle Duddle which is a Canadian version of Mad Magazine. It is a satire on politics and so on. We are going to handle the national distribution of this magazine. This letter over here is going to all wholesalers. I will just read you one brief little column in here:

" Most of your average clients think of accounts and I know how difficult it is for a magazine to get distribution. Please send a copy to the various buyers and try to obtain their authorization. I am positive that once they see the magazine they will realize the sales potential and be just as enthusiastic as we are."

MR. CAMP: Is that your comment?

THE WITNESS: That is my comment to all local distributors.

THE CHAIRMAN: Who is this published by?

THE WITNESS: Fuddle Duddle is published in Ottawa, it is a new publication.

THE CHAIRMAN: I might comment. The word Fuddle Duddle has a rather historic significance. I think it is only appropriate to put it on record that I had lunch with the Prime Minister the day that he said this word and he got so agitated over lunch that he was late and he rushed out from lunch and went into the House and immediately said"fuddle duddle".

DR. JEANNERET: He founded the magazine.

MR. CAMP: I don't know, there is a magazine there called Peeping Tom. Is that a magazine?

THE WITNESS: It is a tabloid.

THE CHAIRMAN: What is a tabloid, yourdefinition?

THE WITNESS: A tabloid is a newspaper about half the size of a daiy newspaper, sort of a half size newspaper -- Hush, Tab and so forth.

MR. CAMP: Who publishes that?

THE WITNESS: I couldn't tell you, Peeping Tom.

MR. CAMP: Is it Canadian?

THE WITNESS: It is not Canadian.

MR. CAMP: Can you find out?

THE WITNESS: Yes.

THE CHAIRMAN: Find out the distributor and from whom he gets it.

MR. HOLLAND: Q. Mr. Romanez, Mr.Molasky has asked a number of questions yesterday that he could not answer and said that you probably could answer. I tried to make a note of some of those questions. One of them was: What was purchased, if anything, from Capital Distributors by Metro Toronto News Company? Did you obtain that information?

A. Yes, we purchase mass market magazines from them. We do not purchase paperbacks.

Q. And do you have a list of those magazines?

A. I believe Mr. Sedgwick has a list.

MR. SEDGWICK: We will produce it.

DR. JEANNERET: While you are looking, could I ask is a rack jobber the same thing as the jobber you are speaking of, that is what you mean by a rack jobber?

THE WITNESS: Yes.

MR. HOLLAND: Q. Perhaps we can go on to something else while that list is being obtained.

I think you were also asked to get for the Commission the per cent of Canadian publications broken down between magazines and

paperbacks as opposed to other than Canadian publications distributed by Metro Toronto News Company?

A. Approximately 5 per cent.

Q. Can you break that down between magazines and paperbacks?

A. 5 per cent magazines and about 0.1 per cent paperbacks.

MR. CAMP: What was the question, Mr. Holland?

MR. HOLLAND: The percentage of Canadian publications as opposed to non-Canadian publications broken down between magazines and paperbacks and the answer was 5 per cent Canadian magazines, 0.1 per cent paperbacks.

DR. JEANNERET: 5 per cent is a dollar per cent, more or less?

THE WITNESS: I can't figure dollar percentage.

MR. HOLLAND: Q. Could you obtain that figure for magazines?

A. It could be obtained.

Q. Will you try and obtain that, please?

A. Yes.

Q. And then there was another question and that was, as I understand it: Colonial Distributors Limited is in itself a national distributor and is associated with Metro Toronto News Company Limited?

A. Yes

Q. Can you tell us what Canadian publications, if any, are distributed by or through Colonial Distributors Limited?

A. Mainly Canadian magazines. I have a list here. May I qualify that as Canadian publications?

---EXHIBIT NO. 13: List of Canadian publications distributed by Colonial Distributors Limited.

MR. CAMP: Is there a new edition called Bodero Publication?

THE WITNESS: Yes the same as Sales Publishers, Bodero?

MR. CAMP: Are these what they call mass paperbacks?

THE WITNESS: They are aiming at that.

MR. CAMP: Any titles?

THE WITNESS: Canadian titles.

MR. HOLLAND: Mr. Chairman, subject to the production of the further information on that further list those are all the questions I have of this witness.

THE CHAIRMAN: I wanted to ask, Mr. Romanez, we have this list, I don't know that it is marked, of publications. Have you seen this document?

THE WITNESS: Yes, I have that list here.

THE CHAIRMAN: I think that is something Mr. Molasky has given us and I think we should mark this Exhibit 14. You have that document in front of you?

THE WITNESS: Yes, I have.

---EXHIBIT NO. 14: List relating to names of distributors from whom publications are acquired.

THE CHAIRMAN: The first page says, Ace News Company Limited. I take it these listings on these sheets relate to the names of the distributors from whom these publications are acquired.

THE WITNESS: That is right.

THE CHAIRMAN: Looking at the first one which is the Ace News Company Inc., "Publication with display allowance available". Those words appear at the top of each page. What is a "display allowance"?

THE WITNESS: It is a contract entered into between the publisher and the retailer for retail display allowance, which we got in Montreal.

THE CHAIRMAN: Can you explain what type of allowance it is you are talking about?

THE WITNESS: There are many magazines on the list on which you get an additional 10 per cent off.

THE CHAIRMAN: That is an amount that is credited to the retailer, given to him by the publisher? Do you get involved in this process at all?

THE WITNESS: None whatsoever.

THE CHAIRMAN: How is the accounting made between the publisher and the retailer?

THE WITNESS: The retailer keeps his own records.

THE CHAIRMAN: Is there some form that is used between the retailer and the publisher where the retailer can make application for his discount? How does he prove it?

THE WITNESS: He signs a contract with the publisher and that is something the publisher does, we don't enter into it.

THE CHAIRMAN: You don't enter into it at all?

THE WITNESS: No.

DR.JEANNERET: This display allowance is offered uniformly to all customers?

THE WITNESS: Exactly.

MR. CAMP: Mr. Romanez, you are wholesaling certain of your publications to Mac's Milk, is that right?

THE WITNESS: Yes.

MR. CAMP: Do you include TV Guide?

THE WITNESS: Yes.

MR. CAMP: One of your best selling publications. I use the phrase because it is in Mr. Molasky's submission.

THE WITNESS: TV Guide.

MR. CAMP: Only?

THE WITNESS: Yes.

MR. CAMP: What day does TV Guide hit the streets of Toronto?

THE WITNESS: It is usually Tuesday and Wednesday.

MR. CAMP: Tuesday and Wednesday?

THE WITNESS: Yes.

MR. CAMP: How many outlets are there in Toronto, roughly?

THE WITNESS: I have no idea.

MR. CAMP: Distributors are scattered throughout the Metropolitan area?

THE WITNESS: Yes.

MR. CAMP: Do you make them all on Tuesday?

THE WITNESS: Or Wednesday.

MR. CAMP: So, they get it either Tuesday or Wednesday?

THE WITNESS: Yes.

MR. CAMP: If there were an example of a bookstore next door to Mac's Milk who saw it in Mac's Milk on Tuesday and he didn't get it until Wednesday and he was paying $1.75 which was the maximum service charge, what would be your explanation for that?

THE WITNESS: It is a matter of delivery.

MR. CAMP: Well, would it be a surprise if it was the same truck that came up Wednesday that was there on Tuesday?

THE WITNESS: It would be a surprise

to me if it was.

MR. CAMP: Mac's Milk situation is somewhat competitive, isn't it, at the moment?

THE WITNESS: Yes, it is.

MR. CAMP: Somebody else is also acting as the wholesaler?

THE WITNESS: Yes.

MR. CAMP: Who is that?

THE WITNESS: Five Point Sales.

MR. CAMP: That is a Canadian firm?

THE WITNESS: I don't know.

MR. CAMP: How long have you been putting TV Guide in Mac's Milk?

THE WITNESS: Long before I started.

MR. CAMP: Long before you started?

THE WITNESS: Yes.

MR. CAMP: How long?

THE WITNESS: I have no idea.

MR. CAMP: Does High Point handle TV Guide?

THE WITNESS: Not that I know.

DR. JEANNERET: You wouldn't expect most Mac's Milk branches, outlets, to get it late, as related to the average person? You would expect it to be mixed?

THE WITNESS: That is right.

MR. CAMP: It seems to me we were given arithmetic yesterday by Mr. Molasky -- do High Point handle Curtis for Mac's Milk?

THE WITNESS: Yes.

MR. CAMP: They handle almost all the other distributors?

THE WITNESS: No, they don't. They do have Curtis.

MR. CAMP: And so do you, but not for Mac's Milk?

THE WITNESS: That is right.

DR. JEANNERET: Could I ask what your policy, as a wholesaler is, Mr. Romanez, with respect to orders that you receive for specific titles in mass market paperbacks, the series that you handle? Do you fill these orders?

THE WITNESS: Yes. We have a list of over 2 million books. We are trying to fill every order we get.

DR. JEANNERET: What if they are not in stock?

THE WITNESS: We order them.

DR. JEANNERET: Do you communicate with your retailer that his order is in and advise him of the situation?

THE WITNESS: Yes, we do.

DR. JEANNERET: If it is a book that has not yet been published and is going to be published, say it is seen in Publishers' Weekly, or something, would you agree that the College store situation is a very important area in this regard because of the fact that they have to get specific books and a very large number of titles, in reasonably substantial quantities, not always, and they need service?

THE WITNESS: Yes.

MR. CAMP: Do you get very many complaints about the retailers' inability to get sufficient magazine copies?

THE WITNESS: Yes, we do, it is reasonably common and it is reasonably common for us to complain about publishers not giving us enough. In the same respect as it is reasonably common for us to complain to our publishers and national distributors that we are not getting enough magazines.

MR. CAMP: So it is a fairly common occurrence, I gather, that there would be extra copies on one newsstand, whereas, another retailer would be out?

THE WITNESS: We are constantly

running into this problem, yes.

MR. CAMP: Do you very often have to decline an order from a retailer for a particular publication?

THE WITNESS: Never, to my knowledge.

MR. CAMP: What about Billboard, do you distribute that?

THE WITNESS: We don't handle that at all.

MR. CAMP: Do you know who does?

THE WITNESS: One of the national distributors. If I had a request, I would handle it.

MR. CAMP: If you had a request, you would get it?

THE WITNESS: Yes.

MR. CAMP: But you have none?

THE WITNESS: None whatsoever.

DR. JEANNERET: Am I correct in my understanding, Mr. Romanez, from the standpoint of publishers of periodical sales through the wholesaler to the retailer have a higher advertising value per copy than sales by subscription, or is this a consideration?

THE WITNESS: I wouldn't know.

DR. JEANNERET: I am just asking for information.

THE WITNESS: I would probably think it does.

DR. JEANNERET: On the grounds that the person who buys it wants it and is going to read it.

THE WITNESS: I would think so.

MR. CAMP: In view of what you have been telling the Commission about your operation, it is hard to understand the complaints one hears from retailers that they can't get enough copies of a particular magazine and yet they are overstocked with others. In other words, you don't put into any retail outlet any more copies than you have orders for?

THE WITNESS: That is not correct.

MR. CAMP: Would you explain, then, how it works that a retailer will have more stock than he wants and not enough of what he wants?

THE WITNESS: It is a constant revision of distribution. Magazines are returnable and impulse sales, some weeks they sell and some weeks they don't. Certain issues will be sold out and other ones will have excessive returns and it fluctuates up and down. There is no way you can control it. The allotments differ week to week and month to month according to their past history, so you get a constant flow up and down. You usually go by past history and past history isn't always true, depending on what is in the magazine.

MR. CAMP: Do I understand the essence of this is that Metro News arbitrarily

decides on the quantity for a number of retailers?

THE WITNESS: Not arbitrarily, through past history.

MR. CAMP: Through the past history of Metro News?

THE WITNESS: Through the past history of that particular publication, and that particular retailer.

MR. SEDGWICK: I think he means that publication with that retailer.

THE WITNESS: With that retailer, yes.

MR. CAMP: But Metro News makes the decision as to the volume that is put on the racks, so to speak, the number of copies?

THE WITNESS: Again, not necessarily. He puts in a firm order.

MR. CAMP: That is right.

THE WITNESS: The dealer sets his own allotment and he is quite free to do so.

MR. CAMP: Where he doesn't, you make the decision for him.

THE WITNESS: Then we go by past history what he previously sold of that particular magazine. We regulate the returns up or down so we have a lower percentage of returns.

MR. CAMP: But there are instances where you decide as to how many go to the retailer of the premises and where they

are displayed and how they are displayed and so on?

THE WITNESS: Constantly.

MR. CAMP: Your employees rack the shelves, they put the magazines up?

THE WITNESS: No, they don't.

MR. CAMP: Never?

THE WITNESS: No.

MR. CAMP: They are just left on his doorstep and that is it?

THE WITNESS: That is it exactly, periodicals.

DR. JEANNERET: Would you comment on one thing, Mr. Romanez: It is quite understandable why the returns of periodicals can be looked after with torn covers, because it is cheaper and faster and magazines are dead anyway, but then this policy spills over onto paperbacks and I suppose this does lead to some recriminations on the part of publishers, doesn't it, that is, a preferred, simple and easy method of accounting for returns, but would you say they are not resaleable anyway?

THE WITNESS: Well, if we retained every paperback we received, we would have 5 million in our warehouse.

DR. JEANNERET: You would return these paperbacks to the publisher?

THE WITNESS: They would take full-copy returns.

DR. JEANNERET: You mean the publisher of the paperback would prefer to have the books killed?

THE WITNESS: Exactly.

DR. JEANNERET: I put it to you, then -- this is not unanimous, but that is what you understand?

THE WITNESS: That is my understanding. Exactly.

MR. SEDGWICK: I want to ask some questions.

THE CHAIRMAN: I am not quite finished.

MR. CAMP: I want to go to lunch.

THE CHAIRMAN: Not quite yet.

MR. SEDGWICK: I am in no hurry. Take another day.(Laughter)

THE CHAIRMAN: In connection, Mr. Romanez, with the Canadian publishers of magazines, do you deal directly with them, or do you deal through a distributor, take McLean's for example, do you deal directly with McLean's?

THE WITNESS: Yes.

THE CHAIRMAN: Do you deal directly with most of the magazine publishers in Canada?

THE WITNESS: Directly, the majority.

THE CHAIRMAN: You don't have a middle man in between?

THE WITNESS: Very seldom.

THE CHAIRMAN: Do you have an average figure or percentage that you lobk for between, in your dealings with them? You gave me 46 per cent on paperbacks. What is your markup, or whatever you want to call it?

THE WITNESS: The same for Canadians as Americans. On periodicals or magazines it varies from 36 to 40.

THE CHAIRMAN: 36 to 40. Does it ever exceed that?

THE WITNESS: At times, yes.

THE CHAIRMAN: At times. Have you, in your experience with Metro at any time required an increase of a percentage of any Canadian magazine publisher?

THE WITNESS: The same as I would an American publisher.

THE CHAIRMAN: Have you, in your time with Metro News ever asked for an increase in a percentage from a Canadian periodical or magazine publisher?

THE WITNESS: Not to my knowledge.

THE CHAIRMAN: Not to your knowledge. You have not been involved with that?

THE WITNESS: That is right.

THE CHAIRMAN: Now I don't have any further questions.

DR. JEANNERET: Do you serve libraries and do you serve schools, and if so,

how?

THE WITNESS: Through our school book department operation.

DR. JEANNERET: You service both libraries and schools?

THE WITNESS: Yes. How or who or what or where, we do.

DR. JEANNERET: It is a significant business?

THE WITNESS: It is not significant, but it is a necessary part of our business.

MR. HOLLAND: I just have one or two other questions I have thought about.

FURTHER EXAMINATION BY MR. HOLLAND:

Q. Does Metro Toronto News get the same discount as all the other Ontario geographical wholesalers from the distributors or the publishers?

A. I really can't answer that. I don't know.

Q. Is that rate competitive?

A. I can't answer that, I don't know.

Q. Who would know?

A. The publishers themselves, perhaps.

Q. Or the distributors?

A. Or the distributors.

Q. Have you ever tried to negotiate a better rate with the distributors or publishers?

A. Constantly.

Q. And have you succeeded on some occasions in bettering the rate?

A. Constantly.

Q. So, then, it would appear that the rates provided to the various Ontario wholesalers by the distributors do vary?

A. Absolutely.

MR. HOLLAND: Thank you.

EXAMINATION BY MR. SEDGWICK:

Q. Mr. Romanez, do you get many complaints from retailers about the service that your company gives them?

A. What was your question? I didn't hear that.

Q. I say, do you get many complaints from retailers about the service of Metro Toronto News?

A. Not to my knowledge.

Q. If you do get complaints, how are they handled, what do you do about them?

A. Each one is studied individually.

MR. HOLLAND: With great respect,

Mr. Chairman, if he says he has no knowledge ---

THE WITNESS: He said many complaints.

MR. SEDGWICK: I said "many".

Q. You do get some, I suppose?

A. There is nobody in the wholesale business who doesn't.

Q. You say they are handled on an individual basis?

A. Right.

Q. I think we are agreed on this, that, as to any overstocking, the retailer cannot suffer because he has a full right of return, is that correct?

A. Absolutely right.

Q. As to the selection of the periodicals that appear on the racks of the retailer, I believe you said the retailer has the right to make his own selection, is that correct?

A. 100 per cent.

Q. If the retailer prefers to leave the selection to your company, your company makes the selection, is that correct?

A. On the basis of profitability, yes.

Q. On the basis of profitability and so that we will be thinking in the same terms that, of course, would mean profitability to your company and to the retailer?

A. One is hand in hand with the other.

Q. Precisely, your interests are identical, is that correct?

A. Right.

Q. And then is the selection of the periodicals or paperbacks that will be sent to a retailer ever made outside of Canada?

A. Never. I will qualify that -- since I have been here.

Q. Since you have been there?

A. Yes.

Q. I want to read to you a paragraph from the Second Interim Report of this Commission and invite your comment on it. The paragraph reads:

"To the extent that they sell mass market paperbacks in addition to periodicals, (they means distributors like yourself) they usually secure these books from the same sources. Even the selection of titles and authors to be displayed for sale is

1 "
2 normally made by the news
3 company as part of its service;
4 moreover, the selection of
5 titles which the latter may
6 have to draw upon may be
7 determined at an earlier stage
8 in the distribution network,
9 and determined not necessarily
10 even in Canada."
11 In your experience, is that statement correct?
12 A. Absolutely incorrect, 100 per
13 cent incorrect.
14 THE CHAIRMAN: Come, come, we
15 have just had evidence --
16 MR. SEDGWICK: I ask questions
17 and get answers and you insisted on your right
18 and my right is as good as yours. I have the
19 right to ask questions and get answers.
20 THE CHAIRMAN: We will come back to
21 it.
22 MR. SEDGWICK: My right here as
23 a counsellor is just as good as yours.
24 THE CHAIRMAN: Of course it is.
25 MR. SEDGWICK: I am entitled to ask
26 my own questions.
27 THE CHAIRMAN: And I am entitled
28 to ask questions, too, Mr. Sedgwick.
29 MR. SEDGWICK: I agree with that.
30 THE CHAIRMAN: I will determine when
I will ask a question, Mr. Sedgwick.

MR. SEDGWICK: I will determine what questions I will ask with an equal right.

THE CHAIRMAN: Carry on.

MR. SEDGWICK: Q. Now, I read you another paragraph of the Second Interim Report:

"Your Commission understands that some Canadian publishers and retailers of periodicals may in fact be reluctant to give information to it concerning this growing powerful intrusion. They fear that the foreign-owned distributors and wholesalers may refuse to carry their publications, or may impose unacceptable terms when they do so. Such decisions would, of course, be made outside this country. They would affect not only Canadian publishers, but Canadian retailers and their customers as well."

Is that statement correct?

THE CHAIRMAN: Is he qualified to answer it?

MR. SEDGWICK: He is a witness. I shall ask him, I will break it down.

THE CHAIRMAN: You had better qualify him as to whether or not he is capable of answering it.

MR. SEDGWICK: Q. Mr. Romanez, you are the General Manager of Metro Toronto News?

A. Right.

Q. And you have been in the book distributing business for how long?

A. 23 years.

Q. All right, then speaking only for yourself and in your present position and in the position that you held heretofore have you ever known of Metro Toronto News refusing to carry Canadian publications?

A. Never.

THE CHAIRMAN: And he has been with them three months.

MR. SEDGWICK: All right. This report is dated June 8th, I point out to you, which is only a month and a half ago.

THE CHAIRMAN: Get all the facts on the record, Mr. Sedgwick.

MR. SEDGWICK: It would have been well if the Commission had the facts. I am doing the best I can.

THE CHAIRMAN: You are trying.

MR. SEDGWICK: I have been trying a long time with no success.

Q. Now, may I go on to the next step?

1 "
2 Or may impose unacceptable
3 terms when they do."
4 To your knowledge, has your company ever imposed
5 on the Canadian publisher unacceptable terms?
6 A. Never.
7 Q. And then,
8 "
9 Such decisions would of course
10 be made outside this country."
11 Are all such decisions, that is decisions as to
12 carrying Canadian publications, made outside of
13 Canada?
14 A. Never, in my experience.
15 Q. Very well. And as to
16 Canadian publications, Mr. Romanez, have you
17 in your present position made any special efforts
18 to give them public exposure?
19 A. 100 per cent.
20 Q. And as to your method of
21 distribution generally, when you distribute to small
22 retailers, would it be fair to say that the small
23 retailer is content to accept your judgment as to
24 what should be on his rack?
25 A. Absolutely.
26 Q. And when you come to the
27 larger companies and the chains, is it also fair
28 to say that they exercise a judgment of their own?
29 A. Absolutely.
30 Q. For instance, do you sell to
31 Garfield News Company of Canada?
32 A. Yes, we do.

Q. And they, I believe, have the newsstands at all the Metro subway stations?

A. That is right.

Q. And probably in many other places?

A. Right.

Q. I have in my hand a letter dated May 4th, 1971 and addressed to you. I will read it and show it to you. It is on the heading of Garfield News Company of Canada and it says:

"

Dear John:

Pursuant to our telephone chat Monday, May 3, 1971, please acknowledge this letter as confirmation with respect to the distribution of (a) Woman's Weekly Library (b) Dell Purse Books (c) Bantam Purse Books. New York Daily News and New York Sunday Times are to be removed from the authorized title list as agreed.

Thank you for your co-operation,

Ray Hansen,

Assistant General Manager.

Do you remember that letter?

A. Yes, I do.

Q. Does that mean they are asking you to add to your list the Woman's Weekly Library and the other books mentioned?

A. Exactly.

Q. And asking you to delete from the list that you supplied them the New York Daily News and the New York Sunday Times, is that correct?

A. Exactly.

MR. SEDGWICK: May I file this as the next exhibit, Exhibit 15?

---EXHIBIT NO. 15: Letter of May 3, 1971 from Ray Hansen, District Manager of Garfield News of Canada Limited to J. Romanez.

Q. Do you recognize that letter?

A. Yes.

Q. Then, I have in my hand a document headed, "Magazine on Hand Record, Garfield of Canada" and this is dated the 17th of June at 10.30 a.m. and it lists a great many magazines with a tick opposite some of them and a cross opposite others. What would that mean?

A. I think perhaps Mr. McMonigle would know. That is the office function where the magazines were checked out to see whether they were drawing those magazines.

Q. And then I see there is a note in the end in red ink, on the second page. What does the note say?

A. It says,

" Generally okay but could we cut back on Photoplay and Modern Screen".

Q. Then is that an exercise on the part of Garfield News of their unfettered discretion to say what will appear in their shops?

A. Exactly.

MR. SEDGWICK: Can that be the next exhibit please?

EXHIBIT NO. 16: Note in red ink on second page of letter.

Q. Then, do you always supply the Canadian Railway News?

A. Yes.

Q. And as to what appears on their racks, who makes the decision?

A. They do.

Q. And then do they give you a list of authorized titles which they want on their rack?

A. Yes, they do.

Q. I show you a document which says, "Suggested Authorized Title List, Canadian Railway News". Do you recognize that document?

A. Yes, I do.

Q. What is the origin of that document?

A. Those are the magazines authorized by Canadian Railway News.

Q. And then do you, in supplying their various outlets conform to this authorization?

A. Yes.

---EXHIBIT NO. 17: "Suggested Authorized Title List, Canadian Railway News."

Q. So that in the case of Canadian Railway News, the selection is made by Canadian Railway News, is that correct?

A. Absolutely.

Q. Now, do you also supply A & P Stores?

A. Yes, we do.

Q. Do they have a great many outlets?

A. Yes, they do.

Q. And who makes the selection of what appears on the racks in the A & P Stores?

A. The A & P management, buyers.

Q. I have in my hand a document which says,

" Attachment re blanket order effective February 1, 1971, A & P Stores, Canada, magazine master list approved publication."

Will you look at that one, please?

A. Yes, that is right.

Q. Do you recognize that, Mr. Romanez?

A. Yes, I do.

Q. And what is the origin of that document?

A. That is A & P's authorized list of titles that we can distribute to the A & P Stores.

Q. To them?

A. That is right.

Q. And that is a decision that they make, is that correct?

A. That is right.

---EXHIBIT NO. 18: A & P Store's authorized list of titles.

Q. So far as you are aware, was that decision made outside of Canada?

A. Absolutely not.

Q. Or influenced in any way by any foreign interest or influence?

A. No way.

THE CHAIRMAN: The reference which you were kind enough to read to us, Mr. Sedgwick, had to do with paperback books. These exhibits relate to magazines.

MR. SEDGWICK: I am sorry.

Q. As to paperback books, Mr. Romanez, who makes the decision as to what appears on the rack? Now, let us leave the small retailer out, I think we are agreed that probably the firm makes that decision?

A. Yes.

Q. Who makes the decision in large firms of what paperbacks appear?

A. They do, the retailer does.

Q. Does the retailer have the unfettered right to accept or reject any paperback that you send him?

A. Immediately.

Q. And as to any that he does not sell-- and I am speaking now generally -- does he have the right to return them and receive a full credit for those that are not sold?

A. Immediately.

Q. Now, as to Canadian paperbacks the situation may have been a little different, is that correct?

A. Very correct.

Q. What is the difference between the Canadian paperback and the United States paperback so far as you and the retailer are concerned?

A. First of all, the Canadian paperback best sellers are mostly off-size --

Q. Now, may we pause there? By that you mean they are not the standard size of the United States paperbacks, is that right?

A. Exactly.

Q. And being off-size, do they fit readily into the rack that the retailers have?

A. They don't.

Q. What size are they as a rule,

Canadian paperbacks?

A. The size of Coronet and Reader's Digest, Pageant.

Q. Somewhat bigger, wider and longer than the ordinary paperback?

A. Exactly.

Q. And you say that mitigates against sales?

A. It immediately limits the distribution of the paperback.

Q. And then as to returnability?

A. Canadian paperbacks, as a rule, are non-returnable.

Q. They are non-returnable?

A. Yes.

Q. And then when you put the Canadian paperback on the retailer's rack, can the retailer return it to you?

A. 100 per cent.

Q. Can you return it to the publisher?

A. No, we take a loss.

Q. So you must take a loss?

DR. JEANNERET: I understand the witness said Canadian paperbacks are generally not returnable.

MR. SEDGWICK: Yes, that is right.

Q. Is that right?

A. Yes.

DR. JEANNERET: We will establish that as we go along.

MR. SEDGWICK: Q. Generally, in your experience ---

DR. JEANNERET: Can you give us a few examples of firms that would refuse to take back paperbacks that he buys?

THE WITNESS: Who published The Comfortable Pew? McClelland and Stewart? They refused.

DR. JEANNERET: Did you buy them at a preferred discount not protected?

THE WITNESS: They had protection.

DR. JEANNERET: I understand the total Canadian Bestseller Library was protected, but not in the case of booksellers. You had a long discount from the booksellers, is that correct?

THE WITNESS: That is right.

MR. SEDGWICK: I am sorry.

DR. JEANNERET: We will have to go into that.

MR. SEDGWICK: Yes.

Q. Can you give any other examples of Canadian publishers?

A. There are so many. They are countless. It would take me hours.

DR. JEANNERET: Not many publishers.

THE WITNESS: Over the years there have been publishers putting out Canadian paperbacks non-returnable, many of them.

DR. JEANNERET: We are interested in finding out whose policy it is, non-returns.

MR. SEDGWICK: Q. Do you know whose policy it is at the moment?

A. None that we deal with are non-returnable. We are not dealing with any Canadian publishers currently.

Q. I see there are 19 wholesalers and your company is one.

A. I could qualify that, other than Bodero Editions, which is a mass market operation, is fully returnable.

Q. How many Canadian publishers do you deal with?

A. Of paperbacks?

Q. Yes, of paperbacks.

A. One.

Q. One. I see. How many Canadian publishers of other material?

A. Possibly 60 or 65.

THE CHAIRMAN: Would you ask him which is the one?

MR. SEDGWICK: Q. Which is the one?

A. Bodero. I own 50 per cent of it.

MR. SEDGWICK: I want to tell you, you concealed that.

THE CHAIRMAN: We are just trying to get the facts. (Laughter)

MR. SEDGWICK: In my humble way, that is what I am trying to do.

THE WITNESS: If it wasn't for Bodero, what Canadian mass market publications would be on the market?

MR. SEDGWICK: Q. Would there be any?

MR. CAMP: How did Bodero get into the market?

THE CHAIRMAN: If it weren't for you, how would any mass market paperbacks produced in Canada get on the market, for example, in Metropolitan Toronto? It just wouldn't get on unless you put it on, would it?

THE WITNESS: No, absolutely not. They would get on the same as I got on.

THE CHAIRMAN: I see.

MR. SEDGWICK: Let's not leave it there.

MR. SEDGWICK: Q. Have you been offered any Canadian mass market paperbacks which you have refused?

A. Never.

DR. JEANNERET: No general publishing has been offered to you?

THE WITNESS: No.

MR. SEDGWICK: You can't take it if it isn't offered.

DR. JEANNERET: Harlequin?

THE WITNESS: Harlequin we handle.

DR. JEANNERET: How do you get several Canadian?

THE WITNESS: The only mass market general title is one.

MR. SEDGWICK: Q. If I may move away from paperbacks for a moment, in giving your evidence you said it was not feasible to have two wholesalers in one area. I wonder if you could expand on that comment? Why is it not feasible to have two wholesalers handling the same periodical?

A. Because of the fully-returnable basis magazines are offered to a retailer at. To cite an example of this -- I feel it is very pertinent -- in Montreal a year ago a national distributor opened up a second wholesaler which carried Life magazines that Montreal News was carrying. The very first thing that happened at

that time was that agents of the other news companies went in and said "We will sell you the books at a 10 per cent discount. You won't have to sell them. Just put them in Montreal News as returns." The books are fully returnable, unidentifiable, the wholesaler would not know who supplied that book to that particular retailer. Consequently, this is the real reason particular publications are only handled through one supplier.

Q. Otherwise the returnable feature ---

A. If it was sold on a non-returnable basis, it would probably be 10 or 15 or 25 wholesalers in any one area.

Q. Sold as it is on a returnable basis, the wholesaler cannot identify the one he sold from the one his rival sold?

A. Exactly.

Q. If there were two more distributors of the same periodical, you, as a distributor, might end up by getting your rivals' books back on the shelves.

A. Exacly.

Q. Whereas, when you are the sales distributor you do, of course, have an absolute check, is that correct?

A. Correct.

Q. As to warehousing, your company keeps a warehouse in Toronto?

A. Yes, we do.

Q. About how many -- how big is it?

A. I am not sure of the size.

Q. How many tiles or how many books do you keep?

A. We keep an inventory of 2 million paperbacks and approximately 6000 titles.

THE CHAIRMAN: Where are they kept?

MR. SEDGWICK: Q. Where?

A. 120 Sennett Road, Scarborough.

Q. You say apparently 2 million titles?

A. 2 million books, 6000 titles.

Q. And that is carried in order to permit you to give service to your retailers, is that right?

A. Service.

DR. JEANNERET: The great bulk of these books are returnable at will?

THE WITNESS: All, I believe.

MR. SEDGWICK: Yes.

DR. JEANNERET: I was wondering if you were making that point ---

MR. SEDGWICK: No, I am sorry, Dr. Jeanneret, no. The point I am making is that they do carry a very large supply in order to give a service. They do give a service and they try to give a prompt service. That is the only point I am making.

Q. Turning to the TV Guide, where is it printed?

A. In Toronto , on Carlaw Avenue.

Q. On Carlaw Avenue, published here?

A. Yes.

Q. Printed here?

A. Yes.

MR. CAMP: All of it printed here?

MR. SEDGWICK: I believe it is.

Q. Is all of it printed here?

A. Not all.

MR. CAMP: Is the editorial matter printed here? I am not talking about the listings.

MR. SEDGWICK: I think it is. I read it from time to time and the editorial matter is obviously Canadian.

MR. CAMP: Where do the plates come from?

THE WITNESS: What?

MR. CAMP: Where is the editorial material ---

THE WITNESS: You will have to ask the publisher. I don't know.

MR. CAMP: I mean, this interchange, what is the difference between the TV Guide that appears in Toronto and the one that appears in Buffalo, as far as the editorial content is concerned?

THE WTTNESS: I don't know.

MR. SEDGWICK: I don't know.

THE WITNESS: Other than the listings and the editorial section, the Canadian section.

MR. SEDGWICK: I don't know and I am not going to give evidence. I thought they were quite different, but I could be wrong.

Q. As to the question Dr. Jeanneret raised, these books you carry are, of course, returnable?

A. Yes, they are.

Q. Until they are returned, have you paid for them?

A. A good portion, yes.

Q. So that, until you return them, your money is tied up in them, is that correct?

A. Absolutely.

DR. JEANNERET: Would it be all right to ask something about inventory turnover?

MR. SEDGWICK: Certainly.

DR. JEANNERET: What kind of inventory turnover do you have?

THE WITNESS: Of paperbacks?

DR. JEANNERET: Yes.

THE WITNESS: About three times a year.

DR. JEANNERET: I would have thought it would be higher, but even that means you only have a four-month investment and if you ---

THE WITNESS: Four to five months.

MR. SEDGWICK: Thank you.

DR. JEANNERET: I might say my question was not to suggest any lack of service on the part of your client.

MR. SEDGWICK: I welcome questions. I rather like to be heckled. It at least shows people are listening to me. I think that is all for me, thank you.

THE CHAIRMAN: Mr. Sedgwick, there are one or two questions which I thought of which would be of assistance to the Commission in drawing our attention to certain wording in the interim report.

I take it, Mr. Romanez, that because you have already told us that the Canadian paperbacks which you deal in are about .01 of supply, that 99.99 come from the United States? Is that correct?

THE WITNESS: Yes. Other than Harlequin, I want to qualify that.

THE CHAIRMAN: Okay. I don't know how small we can make the percentage.

THE WITNESS: Harlequin is about 18 per cent of the total.

THE CHAIRMAN: Now, when you want to place an order for a mass market paperback that is being produced in the States, it must come from one of those distributors on this list?

THE WITNESS: Yes.

THE CHAIRMAN: Approximately how many distributors do you draw from, that is, draw from for paperback books in the United States?

THE WITNESS: About 13.

THE CHAIRMAN: About 13. Now, how do you place your order, or do they supply you automatically as you supply others automatically, from time to time?

THE WITNESS: The majority solicit orders.

THE CHAIRMAN: They solicit orders?

THE WITNESS: Yes.

THE CHAIRMAN: And do the distributors solicit the orders from the publishers or both?

THE WITNESS: You had better qualify the question .

THE CHAIRMAN: I will try again. Do the distributors of these paperback books solicit orders?

THE WITNESS: From the retailer?

THE CHAIRMAN: No, from the wholesaler.

THE WITNESS: Yes, they do. They come to us.

THE CHAIRMAN: The distributors come to you?

THE WITNESS: Yes.

THE CHAIRMAN: Now, when those

distributors solicit orders, do they approach Pierce News Company in St.Louis or do they approach you directly, or do they do both?

THE WITNESS: They approach us and do not approach Pierce News Company at all.

THE CHAIRMAN: At all?

THE WITNESS: At all.

THE CHAIRMAN: None of those distributors in the United States contacts Pierce News Company? Are you sure about that?

THE WITNESS: In the matter that you mentioned, soliciting orders for Metro Toronto, they do business with Pierce News Company in St. Louis, but not as far as solicitation for Metro Toronto is concerned.

THE CHAIRMAN: I see. Is it your experience, since you have been with Metro News that the agents for the distributors come directly to you?

THE WITNESS: Yes.

THE CHAIRMAN: And do they give you catalogues or order forms to submit to them, which you return?

THE WITNESS: They do.

THE CHAIRMAN: And you submit those order forms directly to them?

THE WITNESS: Yes, we do.

THE CHAIRMAN: Do you submit any forms or requisitions to Pierce News Company from those distributors?

THE CHAIRMAN: I will try again. Do you submit any of the orders for paperback books which ultimately go to the distributors in the United States, do you submit any of those to Pierce News Company?

THE WITNESS: No.

THE CHAIRMAN: And how often do you make an order or prepare an order for paperback books with any of your distributors?

THE WITNESS: Constantly, every month.

THE CHAIRMAN: You do make these orders on a monthly basis?

THE WITNESS: Yes, we do.

THE CHAIRMAN: You make the orders on a monthly basis. Then, these orders are in written form, are they?

THE WITNESS: Yes.

THE CHAIRMAN: And how do you make the selection? From what do you make the selection when the agent comes to talk to you? What does he show you?

THE WITNESS: He shows you covers, proof sheets, past history.

MR. CAMP: What do you mean by "past history"?

THE WITNESS: If it happens to be a known author who has a past history. This is a volume that should sell equal to his such and such a book and so on. It is built up.

MR. CAMP: Selling where?

THE WITNESS: Selling anywhere in general, a best seller.

MR. CAMP: Would that be world-wide sales?

THE WITNESS: Oh, yes. We are experienced in the Toronto area of what we buy of that particular title.

DR. JEANNERET: Would you say without exception, you purchase your paperback books from an exclusive Canadian representative be it a subsidiary of the original publisher or a representative -- do you ever buy directly from the United States?

THE WITNESS: No.

DR. JEANNERET: Do you ever import from the United States?

THE WITNESS: These people over here service the orders from us.

DR. JEANNERET: I understand, but where do you place your orders? Do you ever import paperbacks through the Canadian customs from the United States?

THE WITNESS: Very seldom, only in the case where some major publisher has published something that has to come over the border.

THE CHAIRMAN: What percentage of paperbacks that you get do you get from the distributor who has a warehousing situation in Canada?

THE WITNESS: That is a difficult

question to answer, about 50 or 60 per cent.

THE CHAIRMAN: The rest come across directly to you?

THE WITNESS: Some of them do, yes.

THE CHAIRMAN: If you placed orders, you named three or four of the distributors of paperback books with whom you have placed orders in the last three months, just give me three or four of the major ones?

THE WITNESS: Bantam Books.

THE CHAIRMAN: These are paperbacks?

THE WITNESS: Yes, paperbacks -- Triangle Publications, Popular Library Books, one of the most important is Simon & Shuster.

THE CHAIRMAN: Take those, how many copies of the orders would you file with those distributors? Would you produce for us for the last three months those order forms that you have placed with them? That would be most helpful.

THE WITNESS: I will do that.

THE CHAIRMAN: Would that be available Mr. Sedgwick?

MR. SEDGWICK: We have gone through our office and have looked through all our orders. I will try.

THE CHAIRMAN: I am sure you can find something. I don't think anyone has been in your office for weeks.

MR. SEDGWICK: Not in mine, I wouldn't let them in.

DR. JEANNERET: Mr. Romanez, you say you buy Popular Mechanics Library from Triangle?

THE WITNESS: Popular Libary Books.

DR. JEANNERET: I am sorry, I didn't recognize that. How are Popular Libary Books sold into Kitchener now?

THE WITNESS: Through Metro Toronto News Company.

DR. JEANNERET: Where was the decision to have them sold through Metro Toronto News Company in Kitchener made, in Canada or the United States? Please answer that question.

THE WITNESS: That decision was made in the United States.

DR. JEANNERET: That decision was made in the United States? Mr. Sedgwick, you heard that.

MR. SEDGWICK: No, I did not hear it.

DR. JEANNERET: The decision for Popular Libary Books to be sold into Kitchener via Metro News was made in the United States.

THE CHAIRMAN: Paperback books.

THE WITNESS: No, Popular Libary.

THE CHAIRMAN: A whole line of paperback books.

MR. CAMP: How many titles?

THE WITNESS: I couldn't answer that.

DR. JEANNERET: Roughly, how many

titles?

THE WITNESS: It would be hundreds.

DR. JEANNERET: Hundreds of titles were channelled through Metro Toronto News to the Kitchener area and the decision was made in the United States, not in Canada?

THE CHAIRMAN: By Pierce?

DR. JEANNERET: No, by Triangle.

THE WITNESS: They gave us the franchise. We have territorial rights.

DR. JEANNERET: They made that decision in the United States. This is the point you were on a little while ago.

MR. SEDGWICK: We don't control Triangle.

DR. JEANNERET: Neither does anybody else in Canada but it does support the statement you called in question.

MR. SEDGWICK: The statement, as I read it, has reference to the wholesale distributors here and their connections. We do not control Triangle. If Triangle funnel books through us for distribution in Kitchener, we take them.

THE CHAIRMAN: Since you read the material to us from our own report maybe I can read it again for you because what you read to us is:

" Even the selection of titles to be displayed for sale is normally made by the news company as part of

" its service."

Your witness substantiates that, right?

MR. SEDGWICK: I beg your pardon?

THE WITNESS: We have the decision of what we put out, yes.

THE CHAIRMAN: You have been trying to cover that for the last half hour. The report goes on:

" Moreover the selection of titles which the latter may have to call upon may be determined at an earlier stage in the distribution network and determined not necessarily --"

We used very cautious language. We were not any more familiar and what you are talking about really substantiates totally what we said.

Now, on that --

MR. SEDGWICK: I just want to clear this up. It is pointed out to me that your report talks about titles. Were you talking about titles in Kitchener or book lines?

THE WITNESS: Talking about book line, Popular Library -- a line, not a title.

MR. SEDGWICK: He is talking about book lines, not titles.

DR. JEANNERET: A line could be made up of hundreds of titles.

THE WITNESS: Precisely.

MR. SEDGWICK: And the titles the buyer can select.

MR. HOLLAND: If we are finished with this line of questioning there is a little bit of re-examination, Mr. Chairman, if we have time.

THE CHAIRMAN: I think we might do it after lunch. We will be back at 2.15 p.m.

---Luncheon adjournment.

---The hearing resumed at 2.15 p.m.

MR. SEDGWICK: Mr. Chairman, just before we rose at the time when I was engaged in a conversation with Mr. Holland a question was raised about Triangle Publications. I am afraid I did not clear it up as adequately as I should have liked. May I just ask one or two questions in connection with that?

THE CHAIRMAN: By all means, Mr. Sedgwick.

MR. SEDGWICK: Q. Mr. Romanez, some question was raised about the Triangle Publications paperback lines. How many lines of paperbacks do Triangle distribute?

A. One.

Q. And what is that called?

A. Popular Libary.

Q. And we have been told by Mr. Molasky that the decision to appoint Metro Toronto News as the distributor in the Kitchener area for Triangle Publications for the ones they distribute was made in Miami?

A. That is correct.

Q. Now, as to the titles in the Popular Libary, is the selection of titles which you may draw upon determined anywhere but in Toronto?

A. Right here in Toronto.

Q. Does anyone outside of this

country have any voice in making that decision?

A. None whatsoever.

Q. And as to the Popular Library, it is said to me that it is noted for the fact that it does publish a number of well-known Canadian authors, is that right?

A. Right.

Q. Do you have in mind any names?

A. Offhand, I would say the Costain Series and also Hugh McLellan.

Q. You can't recall offhand any others?

A. It is all I can think of at the moment.

MR. SEDGWICK: That is all I can think of at the moment.

THE CHAIRMAN: We may want, Mr. Sedgwick, to put one or two questions on the points you have raised.

DR.JEANNERET: That is completely in accord with what our understanding was.

MR. SEDGWICK: The interim report speaks of determination as to titles. That determination is made in Toronto. The decision to appoint the Metro Toronto News as distributors was, of course, made in Miami.

MR. CAMP: Your answers were based on your experience of the last three months?

THE WITNESS: In this area, yes.

MR. CAMP: You would not be aware of

any decisions being made in St. Louis or otherwise, prior to your coming to the company?

THE WITNESS: No.

MR. CAMP: For all you know they have all been made that way prior to January 1st, this year?

THE WITNESS: Yes.

THE CHAIRMAN: Are you a wholesaler for Saturday Night?

THE WITNESS: Yes, we are.

MR. CAMP: Is it true that Garfield News has discontinued Saturday Night for a period?

THE WITNESS: I am not aware of that.

MR. CAMP: You didn't get a "Dear John" letter about Saturday Night from Garfield?

THE WITNESS: No.

MR. CAMP: It is my information that it was discontinued by Garfield for a period and I would be interested in whether or not this would be something that you would not know about ordinarily or that you would not believe happened because if it had happened you would have known about it?

THE WITNESS: If it happened in my time I would have known about it.

MR. CAMP: That is probably the explanation. I realize, of course, that the retailer has a good deal of discretion, some retailers have a good deal of discretion and obviously if they are over-stocked they have full returns and they don't lose any money but if they are under-stocked they

lose money and the fact that they are under-stocked and others are over-stocked for the same publication would mean that some would lose money and others would make money?

THE WITNESS: Yes.

MR. CAMP: And they have no alternative, in some cases it is difficult, if not impossible, for some of them to get adequate stocks of magazines they want from you.

THE WITNESS: It is not difficult or impossible.

MR. CAMP: Would you be surprised if someone came here and said, that they had tried to get copies of certain publications and could not get enough?

THE WITNESS: I would be surprised. There could be isolated cases, yes.

MR. CAMP: But there are such cases?

THE WITNESS: Absolutely.

MR. CAMP: Over which the retailer has no control?

THE WITNESS: He has control, yes. He can adjust his orders whenever he wants to in any way possible.

MR. CAMP: As well as that, of course, the decision as to whether a certain store gets TV Guide or Newsweek in their stores on Tuesday or Wednesday, would that surprise you that if the one that gets it on Wednesday were to lose money on that, say, TV Guide, because if they had it

on Tuesday they would make more sales? Do you decide whether or not who gets it and on what day?

THE WITNESS: The routing of the delivery decides who gets it. Everybody can't be first and everybody can't be last. Somebody has to be first and somebody else has to be last. It just depends what route he follows.

MR. CAMP: My point, Mr. Romanez, though, is that you have power to decide who gets it on Tuesday and who gets it on Wednesday?

THE WITNESS: Not really.

MR. CAMP: Is it just an accident?

THE WITNESS: No.

MR. CAMP: You do not think it is an accident if it happens to the same people accidentally every week. Is that your description of an accident?

THE WITNESS: No. We can't physically deliver all of the distribution in one day, to every store at the same hour in the wholesale in Toronto.

MR. CAMP: Certainly not. So, as a result of that, some get it on Tuesday and some get it on Wednesday and a magazine has a life of seven days, that is.

THE WITNESS: That is predated, it doesn't come into effect until Saturday. It takes a few days for the TV Guide to come into effect.

MR. CAMP: That is a good point. Nevertheless, you decide, your company decides?

THE WITNESS: It is a victim of routing.

MR. CAMP: Is there any way that the dealer could get it if he knew so and so, or such and such?

THE WITNESS: No way.

MR. CAMP: You are not aware of a special arrangement made with regard to the promotion of the new American Library Series, a special promotion involving books by Mickey Spillane? This was a decision that was made in St. Louis that this promotion should take place in this market?

THE WITNESS: Not in my time. I am not aware of it.

MR. CAMP: You wouldn't be surprised, though?

THE WITNESS: I am not aware of it.

MR. CAMP: Do you know a magazine,

a new Canadian publication called Toronto Music Guide?

THE WITNESS: Yes, I do.

MR. CAMP: This is a magazine which, I gather, specializes in FM music. I gather they came to you and asked you to distribute their publication, their new publication, which you agreed to do, is that right?

THE WITNESS: Right.

MR. CAMP: I believe you indicated to them you wished to have the magazine in your warehouse at least eight days in advance of publication.

THE WITNESS: That is the standard procedure.

MR. CAMP: Standard procedure. Is it true that the publication date of the magazine was June 1st and by Monday night, the 24th, Tuesday morning, the 25th of May, you had 11,000 copies of that publication?

THE WITNESS: Well ---

MR. CAMP: Maybe 10,500?

THE WITNESS: 7000 was what they sent us.

MR. CAMP: Which was all you were aware of of the first edition. That was in your hands on the 25th of May? Is it not also true that you did not get it out until the 7th of June?

THE WITNESS: Yes, it is.

MR. CAMP: And you told us earlier, of course, that you made the rounds in Metro Toronto two and three times a week. Are you aware of what the publishers of Toronto Music Guide then felt obliged to do as a result of the fact you had the publication in your warehouse and were not delivering them?

THE WITNESS: I am very well aware of it.

MR. CAMP: I understand they went and sought to distribute it by other means, specifically through the Buy and Sell Press.

THE WITNESS: Are you also aware of what he did afterwards?

MR. CAMP: I haven't come to that yet. You assisted them in distributing additional copies of the magazine to some retail outlets, which would be in addition to the copies which were then in your warehouse?

THE WITNESS: This is a complete falsehood.

MR. CAMP: Wait a minute now. When they were not satisfied with the alacrity with which you distributed their magazine, they went elsewhere, which would indicate ---

THE WITNESS: Not on that issue.

MR. CAMP: Not on that issue?

THE WITNESS: Not on the first issue. The second issue, they went to other distributors.

MR. CAMP: Who is distributing the magazine now?

THE WITNESS: We are again.

MR. CAMP: Would it surprise you that the people who were trying to distribute the magazine to retail outlets that you service, were told by some source that they would not take it any longer because they were uncertain as to what the reaction would be if Metro News found out?

THE WITNESS: It would surprise me very much, it would.

MR. CAMP: It would surprise you very much. As a matter of fact, in an effort to distribute the magazine, which you had in your warehouse, they not only did it through another company as best they could, but the publishers took it around themselves. The fact of the matter was, or seems to be -- we can find this out -- that Buy and Sell, although they had indicated to them that they had got it into 1500 retail stores, found they could not. I wonder why they couldn't?

THE WITNESS: The answer I got from the publishers was they just could not be bothered, or they gave them a song and dance. They got a song and dance from Buy and Sell.

MR. CAMP: Can we go back now and find out if you had 11,000 TV Guides stored as of June 1st, and you had them eight days in

advance. This was de rigeur in the trade.

THE WITNESS: On Monday, we do not have them in the warehouse eight days prior to distribution. A lot of work is involved to get the distribution and we are never certain when the publication date is going to be. If they got it to you on Monday or Tuesday, we end up getting it a week to ten days later and we can't handle it. We put the magazine on the delivery invoice and find out it is not out on time. We have to, usually, or normally, the first issue, there are some problems because you are not certain of publication dates, but the subsequent issues become a routine pattern and it follows the same pattern as other magazines.

MR. CAMP: They indicated what the date would be on their first edition and you told them you wanted it eight days in advance?

THE WITNESS: They did not. They did not call me when it was coming in and they didn't phone me and I didn't know when it was coming. They didn't do that. If they had, it would have gone out on time.

MR. CAMP: It was just left in the warehouse?

THE WITNESS: We didn't know what it was. We were not informed. They were supposed to phone me and tell me the Music Guide was going to arrive at such and such a time,

and it would be put in the chain of events and it would have been then met the same date, sale date. This is a very isolated case.

MR. CAMP: I think I am principally interested -- I doubt you could really assist me much as to why retailers were reluctant to accept it.

THE WITNESS: I couldn't tell you.

MR. CAMP: I don't know either.

THE WITNESS: They accepted Buy and Sell so why wouldn't they accept this?

NR. CAMP: I don't expect you can answer that, but these are the facts of the matter.

THE WITNESS: I can't.

MR. CAMP: As I see them.

THE CHAIRMAN: I am very interested in one point which was made through your counsel in response to a question. He asked the question -- I think this is correct, Mr. Sedgwick: "Does anyone outside Metro News in Toronto have any voice in the selection of titles on paperback books?".

MR. SEDGWICK: That is right.

THE CHAIRMAN: And you said "No", or "Absolutely not", or something of that kind. Now, that has been your understanding since January 1st when you first became engaged with this firm. May I ask you, then, sir, certain questions in connection with your

relationship with the firm: Is it correct that you are the general manager?

THE WITNESS: Absolutely.

THE CHAIRMAN: Of the Canadian operation?

THE WITNESS: Yes.

THE CHAIRMAN: Does this also mean that you are managing under a contract the operations in Belleville and London and those places, it is all coordinated?

THE WITNESS: I am general manager of Metro Toronto News Company. They operate acquisitions and I am manager of acquisitions.

THE CHAIRMAN: You are operating acquisitions as well?

THE WITNESS: Yes.

THE CHAIRMAN: Are you an officer of Metro Toronto News Company Limited?

THE WITNESS: I am not.

THE CHAIRMAN: Are you an officer of the partner with Metro Toronto News Company Limited in the Metro Toronto News Company operation?

THE WITNESS: I am not.

THE CHAIRMAN: You are not. Is it fair to say you are an employee of the limited partnership?

THE WITNESS: I am a 50 per cent employee of the partnership.

THE CHAIRMAN: I see. Have you a written contract with the company?

THE WITNESS: No, I do not.

THE CHAIRMAN: You do not. Have you any understanding from your employer as to the nature of your duties?

THE WITNESS: Yes, I do.

THE CHAIRMAN: And from whom do you receive instructions as to the nature of your duties as general manager?

THE WITNESS: From Metro Toronto News Company Limited.

THE CHAIRMAN: What member of that company instructed you as to your duties?

THE WITNESS: Mr. Mark Molasky, President.

THE CHAIRMAN: He is the president of the company. Is it fair to say that your employment can be terminated by the president of that company for cause, or whatever reason, it is in his hands, in the company's hands?

THE WITNESS: Absolutely.

THE CHAIRMAN: And it is true, therefore, that the policies under which you operate and the terms of reference under which you operate as general manager, are received from the president of the company or from the Board of Directors, is that not correct?

THE WITNESS: Yes.

THE CHAIRMAN: That is correct.

So that, at this time it is within the competence of the Board of Directors, or the president to change the terms of reference of your employment or at any time the Board or president, or in combination, so wish, is that correct?

THE WITNESS: Absolutely.

THE CHAIRMAN: So that at any time there is a change in policy which could be made effective, which would change this existing policy as of January 1st with regard to where the selection of titles is, in fact, made, is that correct?

THE WITNESS: No, it isn't.

THE CHAIRMAN: Tell me why?

THE WITNESS: When I was appointed general manager of Metro Toronto News Company, with full control of the operations, I had to produce the sales, I had to produce the profits, if I don't, I don't have a job.

THE CHAIRMAN: That may be, but the decision, therefore, whether you are a general manager and policy remains in your hands. This is a fact?

THE WITNESS: That is a fact.

THE CHAIRMAN: Now, I think that we have covered that point. I think you have been fairly direct with your evidence. It certainly bears on the question Mr. Sedgwick raised, but I wanted to get through to you the kind of perspective as to where the control, in fact, lies,

so that none of us are under misapprehensions. I wonder, Mr. Holland, have you anything that you wish to ask?

MR. HOLLAND: Yes.

RE-EXAMINATION BY MR. HOLLAND:

Q. Mr. Romanez, I am showing you a letter, at least a copy of a letter, obtained by subpoena from McLean Hunter Limited. Are you familiar with the letter here of Pierce News Company, dated May 3rd, 1971?

A. Yes.

MR. HOLLAND: I have just given a copy to Mr. Sedgwick and perhaps he can confirm that is Mr. Molasky's signature.

MR. SEDGWICK: Yes.

MR. HOLLAND: He has confirmed it is Mr. Molasky's signature.

Q. Perhaps we can go through this letter together, Mr. Romanez?

THE CHAIRMAN: Have you a copy of that we might have, please?

MR. HOLLAND: Yes, sir.

THE CHAIRMAN: Are you going to put this in as an Exhibit? That will be No. 19.

---EXHIBIT NO. 19: Copy of letter from Pierce News Company to McLean Hunter Limited, dated May 3, 1971

MR. SEDGWICK: I didn't want someone to be charged with forgery.

MR. HOLLAND: Q. If we can just read through this letter together, Mr. Romanez, dated May 3rd, 1971, addressed to Mr. Claire Ingram, Manager, McLean Hunter Limited, 481 University, Toronto 2, Ontario:

"Dear Mr. Ingram:

In the past few months there has been a dramatic change in the operational set-up of the Molasky complex. This letter will outline the various responsibilities of some of our key personnel. We hope you will refer to this when contacting our company. This should enable you to reach the right person in our organization to properly assist you.

We would appreciate your forwarding this information to your department heads. We of Pierce News Company are confident that we now have the most progressive and dynamic organization in the industry. We assure you that a complete effort will be made in all our areas of distribution to attain the maximum in efficiency and sales. Our door will always be open and we hope you will not hesitate to call on us.

Sincerely,
Pierce News Company,
Mark Molasky, President."

And then attached to this letter is the list referred to in the letter and I refer you particularly under the heading "St. Louis (Pierce News) Corporate

Headquarters" to the name"S. Leslie Flegel"and under that he is described as follows:

" Co-General Manager of Operations, General Marketing Consultatant of Operations, General Sales Manager of Operations(please refer all new magazines St. Louis)".

Now, pausing there, does this not mean, or did this not direct Maclean-Hunter Limited when publishing a new magazine to first refer it to Mr. Flegel in St. Louis?

A. No way.

Q. You don't gather that from this letter?

A. No way.

Q. What do you gather from that?

A. I gather from this letter that Mr. Leslie Flegel is General Operations Marketing Consultant of all operations. If they refer to new magazines, St. Louis, they probably refer to St. Louis new magazines. I have never submitted a magazine to St. Louis.

Q. You were not asked to but I suggest that Maclean-Hunter Limited were asked to do exactly that?

A. Not to my understanding. Mr. Molasky could probably answer that better than I can.

Q. Let us go on.

THE CHAIRMAN: Is there any significance

to the fact that this man is referred to as "Co-Manager"?

THE WITNESS: None whatsoever. As far as I am concerned he is General Manager of Pierce News Company.

THE CHAIRMAN: It says, Co-Manager of all Operations. Are you part of the operation?

THE WITNESS: No.

MR. HOLLAND: Q. The next name, "Robert Bernstein" who is described as Vice-President, Paperback Books, all operations (please refer all paperback allotments all operations).

A. The same.

Q. What does that mean to you?

A. It means nothing to me. First of all, Mr. Bernstein, I think Mr. Molasky mentioned, is no longer employed.

Q. But if you had read this and you were with Maclean-Hunter Limited, would that not mean to you that you should refer all paperback allotments to Mr. Bernstein in St. Louis?

A. What it would mean to Maclean-Hunter, I don't know. It means to me that I set up my own office, I have no reference to then, whatever it refers to and this letter doesn't apply to me.

Q. It doesn't refer to you but it does apply to a Canadian publisher, does it not?

A. No, it does not.

Q. Is Maclean-Hunter Limited not a Canadian publisher?

A. It is a Canadian publisher.

MR. CAMP: They addressed the letter to Maclean's.

MR. HOLLAND: Q. They don't suggest that anything be referred to you, they suggest it be referred to St. Louis?

A. The first paragraph over here they refer to the people concerned. Maclean-Hunter is not concerned with Pierce News, they are concerned with Metro Toronto News Company.

MR. HOLLAND: Oh, I see, those are all the further questions I have of this witness, Mr. Chairman.

MR. SEDGWICK: On the second page it says, "Metro Toronto News Company, John Romanez, General Manager".

DR. JEANNERET: Could I ask whether or not all operations under St. Louis, Pierce News, includes, shall we say, Kansas City News on the next page, or Louisianna News? There is only one name given under each of those. Presumably that means for all operations you go back to the directory on the first page?

THE WITNESS: This I am not aware of.

DR. JEANNERET: I know this is outside of your jurisdiction but I suggest that whatever it means for Kansas City and Louisianna, it applies to Metro Toronto News here or at least

that is a reasonable interpretation of it by Maclean-Hunter when they received this letter which was addressed to them.

MR.SEDGWICK: Couldn't Mr. Clare Ingram be called by Commission Counsel and asked if he ever did refer anything to Pierce News?

THE CHAIRMAN: Is it the intention to call him?

MR. HOLLAND: It is the intention of counsel to call Mr, Ingram.

THE CHAIRMAN: On the other hand there are a couple of questions which might be put to this witness which I think we might have arising out of this. How Mr. Ingram relates the way he interpreted this letter is the important point.

MR. CAMP: Well, I don't think I could be helped much but I just wonder, a Canadian magazine had to be bothered with information that didn't have any relation to it. The point is, who cares about Robert Bernstein?

THE WITNESS: It has information on this company, who they are and how to contact them on the third page.

MR. CAMP: You come up on page 3?

THE WITNESS: Yes.

MR. CAMP: What use is all the other information, "Please refer all magazines to St. Louis", and so on, but it doesn't say from where. Why? What is that supposed to mean to

Maclean-Hunter? If it means nothing, why do they send it?

THE WITNESS: They sent it to all publishers and I imagine it is a form letter sent to all publishers.

THE CHAIRMAN: Do you know whether Maclean-Hunter in any of its spheres does any business with Pierce News Company?

THE WITNESS: To my knowledge Mr. Clare Ingram does business with me.

THE CHAIRMAN: With you?

THE WITNESS: Yes, to my knowledge.

THE CHAIRMAN: And that has been since the period of January 1st, Maclean-Hunter have done business with Metro Toronto News Company, is that right?

THE WITNESS: Yes.

THE CHAIRMAN: And, to the best of your knowledge, it has not done any business with Pierce News Company as such?

THE WITNESS: To the best of my knowledge, no.

THE CHAIRMAN: And, therefore, in answer to Mr. Camp's questioning, can you explain why Pierce News Company over the signature of Mark Molasky would write to Mr. Clare Ingram, Manager of Maclean-Hunter Publishers, setting out all of these instructions?

THE WITNESS: Perhaps Mr. Molasky could explain it.

THE CHAIRMAN: But you can't?

THE WITNESS: I can't.

THE CHAIRMAN: Have you examined this letter?

THE WITNESS: Yes.

THE CHAIRMAN: Did you know it was being written when it was written?

THE WITNESS: No, I didn't.

THE CHAIRMAN: Did you get a copy of it after it was written?

THE WITNESS: Yes, I did.

THE CHAIRMAN: Did you raise any objection to it?

THE WITNESS: None whatsoever, I took it for what it was.

THE CHAIRMAN: And you didn't raise any question about the direction, "Please refer all new magazines to St. Louis" or "please refer all paperback allotments all operations" -- you didn't object to this?

THE WITNESS: It didn't apply to me.

THE CHAIRMAN: I see.

MR. CAMP: I will clarify a small matter, if I may. You own 50 per cent of the pocketbook publishing industry in the organization?

THE WITNESS: Yes.

MR, CAMP: Is the other 50 per cent held by a number of other people?

THE WITNESS: It is held by one other Canadian in Montreal.

MR. CAMP: I have a request and I don't know whether I have what I want in front of me. Could we have a full list or do we have a full list of all the magazines and tabloids for which you are wholesaler?

THE WITNESS: You don't, it doesn't exist. It changes constantly.

MR. CAMP: We have the most recent list you have?

THE WITNESS: Yes.

MR. CAMP: It would be effective as to when?

THE WITNESS: Effective as of yesterday.

THE CHAIRMAN: Well, can you provide us with a list as it stood, if you will, as of July 13th, 1971, which is what you were dealing with at that time?

MR. CAMP: How many publications would that be? I am not talking about paperbacks; I am talking about magazines and tabloids which we have now distinguished as a separate category.

THE WITNESS: From my information up to 1500 titles.

MR. CAMP: On the other hand, it must exist somewhere on paper: you must have it for inventory control or something like that?

THE WITNESS: I believe Mr. Ridout has a list of these publications.

MR. CAMP: I don't want to put you to extraordinary work.

THE WITNESS: The list includes all the current magazines.

MR. CAMP: This list would include at one time all the things you had to sell?

THE WITNESS: Yes. You have to have two months or three months of invoices. Those are delivery invoices, for delivering the goods.

MR. CAMP: Perhaps it would do if we could have copies of all the forms that are involved in this process?

THE WITNESS: I will have to go back for six weeks or eight weeks and you will have duplications all the way along.

MR. CAMP: Do you use a computer in your operation?

THE WITNESS: Presently, no, shortly yes.

MR. CAMP: Do you in your sales of publications of pocketbooks, magazines and so on, do you report those sales to St. Louis?

THE WITNESS: We report those sales to the Metro Toronto News Company.

MR. CAMP: And when they are reported to St. Louis I assume there must be a very sophisticated computerized operation there?

THE WITNESS: I don't know the St. Louis operation.

THE CHAIRMAN: Have you been there?

THE WITNESS: No, I haven't.

MR. CAMP: Any of the information which you have with regard to sales relating to paperbacks and magazines is all held here?

THE WITNESS: Yes.

MR. CAMP: The information is not sent to the head office?

THE WITNESS: No, it isn't.

THE CHAIRMAN: Is it reported to the president of the company?

THE WITNESS: Yes, it is.

THE CHAIRMAN: When he is in Canada?

THE WITNESS: Yes, it is.

THE CHAIRMAN: What does he do with it, do you know?

THE WITNESS: As long as we send him the results, that is all he cares about.

THE CHAIRMAN: In detail or aggregate, is it reported to him individually?

THE WITNESS: As long as it is making money he is satisfied.

MR. CAMP: Just to assist me I would like to have available the whole range of your publications services. We have a very short list here. You say you have 1500 of them. We have a list of something less than 20 and then we have this which adds to that and in order for one to get some kind of an over-view as to the extent of an operation such as yours, it would be more easy

if such a list were available but if you don't have one there is no way that I can expect to get it.

THE WITNESS: There is none available.

THE CHAIRMAN: Would you produce it in due course?

DR. JEANNERET: Could I ask one question? When you are ordering your supplies -- and I am sure quantities are changing constantly and you must be booking orders constantly too on a location basis or some way or another -- do you address these directly to the North American distributors or do you have them consolidated with the orders of Pierce News and the other news companies, Kansas and so on?

THE WITNESS: No, directly to the distributors.

DR. JEANNERET: You go straight to the distributor and straight to the customer yourself, you don't go through any other handling. I understand it would be a waste of time if you did.

THE CHAIRMAN: You mentioned one subject which is of interest to me. I asked you whether your operation was computerized and you said, virtually, not yet. Will you explain to us, please, what plans Metro Toronto News Company has, as I understand you are the general manager, in having your system computerized?

MR. SEDGWICK: Surely, Mr. Chairman. Does that have something to do with the cultural life of Canada? (Laughter) Let me refresh your mind by looking at your terms of reference.

THE CHAIRMAN: Do you wish to make a submission to us?

MR. SEDGWICK: No, no, no! Wait a minute please.

THE CHAIRMAN: Take it easy. You are doing very well and I don't want you to get excited.

MR. SEDGWICK: I am not excited. I only appear to be.

THE CHAIRMAN: We will be glad to hear your objection.

MR. SEDGWICK: I would like you to tell me what conceivable connection there is

between a computer being established in the business of my client and the publishing industry in Ontario, the functions of the publishing industry in terms of its contributions to the cultural life and education of the people of the province, and the economic, cultural, social or other consequences for the people of Ontario and of Canada of the substantial ownership or control of publishing firms by foreign or foreign-owned or foreign-controlled corporations or by non-Canadians. What possible connection can there be between those instructions, which are the instructions you are to follow, and whether or not my client proposes to computerize the business?

THE CHAIRMAN: Just one moment. Are you making a submission to us to the effect that this is outside of our competence?

MR. SEDGWICK: Precisely.

THE CHAIRMAN: Is that recorded?

THE REPORTER: Yes, sir.

THE CHAIRMAN: Is that your position?

MR. SEDGWICK: Yes.

THE CHAIRMAN: You have an alternative, as you well know. You keep telling us this -- we believe you -- we know you are competent in this field. You know what your remedies are.

MR. SEDGWICK: I know.

THE CHAIRMAN: You are perfectly entitled to take them. You make a submission to us and we will consider that submission as is

our duty.

MR. SEDGWICK: Only in reference to this question.

THE CHAIRMAN: Having made it, we will consider it and answer your submission. I do not speak for my colleagues, of course. Therefore, they will, in their own way, if they wish, respond and I will as well, and then you can make a decision after that, as to what recourse you feel you need to take. Do you wish to say something?

DR. JEANNERET: I would make the observation, Mr. Sedgwick, and I have answered this question previously, that this was the kind of business -- I am sure this has already been decided by those running it -- that lends itself admirably to computerization and one of the first things, if I tried to decide what sort of computer application we were going to make, we would program the computer to work out a priority order in order of profitability or in order of something else, and presumably it would be profitability. That is of some cultural significance, I think. I think that would be the relevance of the question, as I see it. I don't know if you had that in mind.

MR. SEDGWICK: He can answer the question.

THE CHAIRMAN: I am sorry, sir. You have put on the record your objection and we

are going to respond to it, in case you wish now to take some other opportunity of recourse.

MR. CAMP: I am lost, Mr. Chairman. (Laughter)

MR. SEDGWICK: I think we are going too far afield.

THE CHAIRMAN: Now, Mr. Sedgwick, you have stated your position and Mr. Jeanneret has given his view of his objection. I will give my view. First of all, the whole question of the economic, cultural, social and other consequences for the people of Ontario and of Canada of the substantial ownership or control of publishing firms by foreign or foreign-owned or foreign-controlled corporations, the point that I am asking about bears very directly on the economic consequences, both as, if you will, cultural. I am concerned and I want to ask a question as to whether or not it is the intention to put the computerization, which is perhaps about to occur, here in Metropolitan Toronto with a computer hooked up in St.Louis. Now, if there is such a computerized selection contemplated, this is something that is of interest to the Commission because it bears very directly on the whole terms of reference. As far as I am concerned, we have a broad scope and we have the terms of reference which are quite broad and we are concerned in the public interest, as is our direction. So this is the reason for the question and I think it is a very

simple question which ought, for those reasons, to be answered by this witness. I and my colleagues, I take it, will so direct the witness and if you wish to object to the answer, if you wish to take recourse elsewhere, with the vast knowledge you have, which we recognize, you may take steps to counteract. In any event, those are the reasons I would add to those of Dr. Jeanneret.

MR. SEDGWICK: I don't propose to make a mountain out of a molehill. Answer, if you know the answer.

THE WITNESS: I know the answer. We are not going to be hooking up with St.Louis.

THE CHAIRMAN: You see, if you had left it, we would have finished that.

Do you have any questions?

MR. HOLLAND: No, Mr. Chairman.

THE CHAIRMAN: That will be all, Mr. Romanez.

Mr. Romanez, you have helped us very much in your evidence and we appreciate your attendance. We know you are being watched, not only by the Commission, but by the people who engaged you. You are under pressure from both sides. Thank you.

THE WITNESS: Thank you.

MR. HOLLAND: Mr. Chairman, I would like to clear up what may be some misunderstanding that has arisen in connection with the investigation prior to these hearings. I understood from what

Mr. Sedgwick said before lunch, that investigators from my office had been in the local office of Metropolitan News Company for a week or two.

THE CHAIRMAN: He used the word "constantly".

MR. SEDGWICK: I was mistaken as to who was there. It turns out the people who were there were representing the Director of Investigation and Research of the Combines Investigation Act, Ottawa, and were there in response to an invitation extended by this Commission.

THE CHAIRMAN: What we invited them to do was to take a report.

MR. SEDGWICK: Indeed they did.

MR. HOLLAND: Mr. Chairman, before calling the next witness, I would like to say that we have here, Mr. Ernest Colebourne of Belleville under subpoena. The purpose of subpoenaing Mr. Colebourne was to have him produce a statement of profit and loss of Upper Canada News Limited. He has produced this to me and it is dated September 30th, 1970, and rather than call him to prove it, I would like to file it, unless Mr. Sedgwick has any objection.

THE CHAIRMAN: Has Mr. Sedgwick seen the document?

MR. SEDGWICK: I haven't.

MR. HOLLAND: While Mr. Sedgwick's associate is looking at that statement, perhaps I may call the next witness. Mr. Frederick O'Brien.

FREDERICK O'BRIEN, sworn

---EXHIBIT NO. 20: Statement of Profit and Loss Upper Canada News Limited, dated September 30, 1970

EXAMINATION BY MR. HOLLAND:

Q. You are appearing here under subpoena, Mr. O'Brien?

A. Yes.

Q. Where do you reside?

A. I live in Hamilton, Ontario.

Q. Are you a Canadian citizen?

A. I am.

Q. How old are you?

A. 45.

Q. What is your present position with Mountain City News Company Limited?

A. I am President of the corporation.

Q. How long has that company been in business?

A. It was started in 1907.

Q. I believe that company operates in the Hamilton area?

A. Correct.

Q. Has it always been a family company, if you can call it that?

A. Yes, it has.

Q. What is the gross sales or what was the last figure for the gross sales of

Mountain City News Company Limited?

A. $1,675,249.

Q. Would you look, please, at Exhibit 3, which is the map of Southern Ontario and point out the area, the geographical area serviced by Mountain City News Company Limited?

A. This blue area here (indicating).

Q. That is just around the Bay ---

A. From Burlington along the Lakeshore and halfway down the Niagara Peninsula from Grimsby to Beamsville.

Q. Right. I believe you are also, at the present time, a 25 per cent owner of Kitchener News Company?

A. That is correct.

Q. Would you point out on Exhibit 3 the geographical area covered by Kitchener News Company Limited?

A. This area here in blue.

Q. The light blue area?

A. Around Kitchener, Guelph, Galt and Hespeler.

Q. And does Metro Toronto News Company abut the Kitchener and Hamilton areas?

A. Yes, they do.

Q. As a matter of fact, do they go all around Kitchener and Hamilton and service all around those two areas?

A. Not the Niagara Peninsula but the other area, yes.

Q. That is on the north and on the west and on the southwest?

A. That is correct.

Q. And do you have the gross figure for Kitchener News Company Limited, that is the gross sales?

A. $1,344,029.

Q. I understand that you manage for your father, General News Company -- I am sorry, General News and Novelty Company Limited in Brantford?

A. Correct.

Q. Your father is E.H. O'Brien?

A. Correct.

Q. How old is your father?

A. 85.

Q. Where does he reside?

A. In Hamilton.

Q. That is a family company?

A. He owns it.

Q. Will you point out on the map, please, the geographical area covered by General News and Novelty Company Limited?

A. The area here in brown, primarily it runs along Brantford, along Lake Erie, Delhi, Simcoe, Tillsonburg.

Q. That abuts the territory serviced by you in Hamilton?

A. Yes.

Q. What were the gross sales for

that company in the last year?

A. $647,876.

Q. Do I understand you also manage National News Company Limited in Ottawa, also for your father?

A. That is correct.

Q. Would you point out the area serviced by National News Company Limited in Ottawa?

A. The brown area here and in Ontario we cover from Buckingham to Aylmer on the Quebec side, including Hull.

Q. What were the gross sales of National News Company Limited in Ottawa?

A. $2,284,935.

Q. We have heard some evidence about a small company known as Wentworth News Agency Limited. Where is that located?

A. It is located in the City of Hamilton.

Q. And what service does that company provide?

A. It provides a service within the city limits, primarily for TV Guide and Capital Distributing Company Limited.

Q. And TV Guide is distributed by Triangle Publications?

A. Correct. Now, I must point out that outside of the city TV Guide and Triangle Publications are serviced by Mountain City News Company Limited.

Q. That is your company?

A. That is correct.

Q. So, this is just a little island in the City of Hamilton for TV Guide and the publications distributed by Capital?

A. That is right and in the city too, I must say that we handle other lines other than TV Guide and Seventeen, the other Triangle lines we handle both city and country, the Popular Library, for example, all these are handled by the Mountain City News.

Q. And who is the present owner, as far as you know, of Wentworh News Agency Limited?

A. It is either the Estate of Mr. Mac Fensky or his widow.

Q. When did Mr. Fensky die?

A. Within the last few months.

Q. You have indicated that you own a company and control or manage some other companies and you have shown us the areas. Do you act as a wholesaler of primary publications in the Triangle Publications and MacFadden-Bartell is that all you manage at the present time?

A. With the exception I have indicated of Wentworh News Company, yes, I do.

Q. And also with the exception, I think, of Kitchener?

A. Yes.

Q. And with the exception of this problem, if I could call it that, of Kitchener, have you enjoyed good relations with Triangle and MacFadden-Bartell?

A. For many years.

Q. Have you had any complaints from Triangle or MacFadden-Bartell as to way in which you operated these other companies?

A. Only in the normal course of business which we might receive from any publisher if he is unhappy about something, but nothing out of the ordinary.

Q. In January or February of 1971, did you meet at the Inn on the Park in Toronto with Les Flegel who, I understand, is the manager, or co-manager of Pierce News Company Incorporated of St. Louis and with Terry Cosgrove who was then the manager of Metro Toronto News Company and with Reg Halliley who I understand at that time was a 60 per cent owner of London and the owner of the Sarnia area concerning the wholesaling of publications to Dominion Stores?

A. Yes, I did.

Q. And at this meeting did you

mention that you might be interested in selling your interest in Mountain City News Company?

A. Yes, in a facetious sort of manner. We were having problems with Dominion and I made the remark publicly that maybe it was time I should sell out.

Q. While we are dealing with this, what problems were you having with Dominion?

A. Well, at this particular time they were considering throwing out magazines throughout the entire chain and that would have meant a loss of a lot of volume for us.

Q. And as a result of this remark that you made, did you receive a telephone call from Mr. Flegel from St. Louis?

A. Yes, I did.

THE CHAIRMAN: Before you proceed further, counsel, would you ask the witness to explain what he meant by that last remark about the magainzes being thrown out and so forth? What did you mean by that?

THE WITNESS: Well, Dominion Stores were not satisfied with the profit they were getting from magazines and were considering removing them from their stores.

MR. HOLLAND: Q. Do you mean by that, removing them completely or arranging for some different method of wholesaling?

A. No, deleting them entirely from their smaller stores or removing them from all

1 their stores.

2 Q. Then we got to the point

3 where Mr. Flegel of St. Louis telephoned you?

4 A. Yes.

5 Q. And what did he say?

6 A. He asked whether I was

7 serious about my offer to sell and I said, "Well,

8 everything has a price".

9 Q. And as a result of that

10 telephone conversation, what happened?

11 A. Mr. Flegel and Mr. Mark

12 Molasky came to Hamilton at which time I

13 supplied them with some information, I did not

14 supply them with a financial statement. I

15 suggested to them the price that I might consider.

16 Q. What was that price?

17 A. $800,000 and suggested to

18 them that price and then I said I was going away

19 on winter vacation and that I would make a

20 decision at a later time. As Mr. Molasky said

21 yesterday, I was within the ball park and we

22 could probably move on to negotiation.

23 Q. And then you went on holidays?

24 A. Yes.

25 Q. What happened when you came

26 back?

27 A. I had a call subsequently

28 from Mr. Flegel and suggested that at this time

29 I was not interested in selling.

30 Q. And I think you have already

indicated that you are a 25 per cent owner of Kitchener News Company Limited. Who were the other owners of that company?

A. The other owners are Bramall from Vancouver, British Columbia.

Q. For what percentage?

A. 25 per cent. However, it is Mr. Bramall's intention at the request of his manager to sell him 11 per cent of his interest -- 11 per cent of the total company so it would be 14 per cent Bramall and 11 per cent Grubb.

Q. 25 per cent you and how about the balance?

A. 20 per cent to Mr. Terry Cosgrove, 20 per cent to Gordon & Gotch(Canada) Limited and 10 per cent to Mr.William F. Smith.

Q. And I believe that these purchases purchased from Harold Hill and Louis James Hill, this business by agreement dated the 20th day of April, 1971?

A. That is correct.

Q. I am showing to you what I believe is a copy of the agreement. Would you be kind enough to look at it and see if you verify this signature at the bottom?

A. Yes, sir, that is a true copy.

MR. HOLLAND: Could this be the next exhibit, Mr. Chairman?

---EXHIBIT NO. 21: copy of agreement dated April 20th, 1971.

MR. HOLLAND: Q. I should point out to you that attached, I think, to the original agreement dated the 20th day of April, 1971, was a profit and loss statement and I believe it is your desire that this profit and loss statement not be made public?

A. That is correct.

THE CHAIRMAN: I beg your pardon?

MR. HOLLAND: Mr. Chairman, attached to this original agreement was a profit and loss statement which formed part of the agreement. Mr. O'Brien has indicated to me that it is his desire that this statement not be made public and I do not think that it should form part of the exhibit and it is not attached to the copy that I have given to you, Mr. Chairman, to be marked as an exhibit.

THE CHAIRMAN: So be it. We are up to Exhibit 21 now which is the agreement between Mr. O'Brien and Messrs.Hilland I understand the next document which is to receive the confidentiality is the financial statement.

MR. HOLLAND: If I may put this profit and loss statement to the witness at this time?

Q. I am showing to you a financial statement. Is that a copy of the financial statement attached to the last exhibit?

A. Yes, it is.

Q. And it is your request that this statement be kept confidential?

A. Correct.

THE CHAIRMAN: It will be so received. That will be Exhibit 22.

---EXHIBIT NO. 22: Financial statement, profit and loss statement, attached to Exhibit 21.

MR. HOLLAND: Q. What was the purchase price under the terms of this agreement?

A. $532,000.

Q. And, I belie e, the transaction closed on the 3rd day of May, 1971?

A. That is correct.

Q. Now, prior to entering into this agreement dated the 20th day of April, 1971, did you or did anyone on behalf of the purchasers communicate with the North American distributors?

A. No, we did not.

Q. From the areas of southern Ontario that you control or manage, it would seem that you have some knowledge of this business?

A. Yes, I do.

Q. How long have you been in the business?

A. 25 years.

Q. Can you tell us whether or not it is usual to seek a prior agreement of the North American distributors to a sale such as this

or a purchase such as this?

A. Yes.

Q. It is usual?

A. Yes.

Q. Why was it not done in this case?

A. I would say for two reasons, one, Mr. Harold Hill did not wish to have associations with a lot of other people and did not want it to become common knowledge; second, he had legal problems inasmuch as the attorney that drew this agreement did not get it into our hands until the 20th day of April, when we expected to have it some six weeks prior to that time.

As a result, from the 20th of April until the convention was being held in Miami we were unable to communicate really with any of the publishers and inform them that we were in agreement to buy this agency and ask for their blessing.

Q. Following the signing of the agreement, did you or anyone on behalf of the purchasers approach the North American distributors?

A. Mr. Bramall, one of the partners, was scheduled into Miami and it was his intention at that time to discuss the matter with the publishers.

Q. It was his intention to do that?

A. Yes.

Q. What date was he due in Miami?

A. It would be the Thursday after the 20th. I believe the 20th was a Tuesday so it would be the following Friday, the 23rd or 24th, or somewhere around there.

Q. Then, on April 21st, the day after this agreement was signed,did you have a conversation with Mr. Hill, one of the vendors, concerning Triangle Publications?

A. Yes, I did.

Q. What did Mr. Hill tell you at that time?

A. Mr. Hill told me that he had just received a call from Mr. Lichtenberg advising him that the TV Guide franchise was not for sale and they would not go for this particular transaction.

Q. That was the day after this particular agreement was signed?

A. Yes.

Q. And that is Mr. Lichtenberg -- what position does he hold with Triangle?

A. He is the Circulation Director of all Triangle Publications located in Radnor, Pennsylvania.

THE CHAIRMAN: Was there any indication as to how Mr. Lichtenberg knew on the 21st that the agreement had been signed the day before?

THE WITNESS: I did not know until the testimony yesterday how he was advised.

MR. HOLLAND: Q. At this stage there

had been no communication as far as you know of the purchases of Kitchener with Triangle?

A. No.

Q. Which Mr. Hill was it that told you?

A. Mr. Harold Hill.

Q. As a result of this conversation with Mr. Harold Hill, what did you do?

A. The following day I phoned Mr. Lichtenberg to try and straighten the matter out at which time he told me that we would not be the distributors for TV Guide in the Kitchener area.

Q. That would be on April 22nd?

A. Yes.

Q. Can you please explain to us the importance of having the wholesaling rights for TV Guide?

A. Well, in economic terms it is 42,000 a week at 2 cents a copy commission to the wholesaler which is $880 a week, times 52 which is an awful lot of gross profit.

Q. How does that publication compare with the other publications that you had?

A. Far superior to anything else, much greater than any other individual item in the line.

Q. So this was quite a blow to you, as one of the new purchasers of this business?

A. Yes, sir!

Q. When you phoned Mr. Lichtenberg on the 22nd, can you remember, or tell us, as best you can, exactly what was said?

A. I had indicated to him that we were a group of Canadians trying to keep this area Canadian, and he indicated to me that TV Guide in Canada was a Canadian company and purchased Canadian paper and hired Canadian personnel and used Canadian printers, and they would pay Canadian income tax, and that way it would stay Canadian.

Q. Was this a pleasant, happy sort of conversation?

A. Heated.

Q. Heated?

A. Heated.

Q. Did he give you any reason for the cancellation of the right to distribute TV Guide in the Kitchener area?

A. I will have to think about that. I am not sure whether he told me the same as he had told Harold Hill, that the TV Guide

franchise was never for sale. I am not sure whether he told me that or not. I can't recall.

Q. Did he give you any other reason that you can remember?

A. No.

THE CHAIRMAN: Did he give you any reason at all?

THE WITNESS: No. As I say, I am confused in my mind whether Harold Hill told me that he had told Harold that the TV Guide franchise was not for sale. Whether he told me that the next day or not, I can't recall.

MR. CAMP: What does "not for sale" mean?

THE WITNESS: If it is sold from one person to another, it does not necessarily mean the TV Guide franchise will continue.

DR. JEANNERET: What is sold?

THE WITNESS: The building, the trucks, fixtures, inventory.

MR. CAMP: You must have assumed when you purchased it, it would involve TV Guide?

THE WITNESS: Certainly. We had no suspicion of this at all. I must say that in a subsequent letter which I wrote to Mr. Lichtenberg, that the whole pattern due to the lateness of the filing, the early signing of this document was the 20th of April. We wished to take it over on the 28th of April because that was the fiscal year end of the corporation,

as you can see from the financial statement. It was a logical time to take it over but due to the lateness of the lawyers involved, it was bad timing all around. We admit it. In the normal course of our business, we should have given Mr. Lichtenberg advance notice.

DR. JEANNERET: Were those physical assets worth anything vaguely resembling $532,000?

THE WITNESS: No.

DR. JEANNERET: So there was something else for sale?

THE WITNESS: Certainly, goodwill.

THE CHAIRMAN: Mr. O'Brien, you called Mr. Lichtenberg. Surely he must have given you some specific reason, aside from your omission or failure to ask him blessing or consent. Wasn't there some other reason?

THE WITNESS: The only thing that I recollect was that he said the decision had been made.

THE CHAIRMAN: The decision had been made. This decision had been made the day before, I take it? On the 21st?

THE WITNESS: I think so, when he told Mr. Hill.

THE CHAIRMAN: What time of day did you call Mr. Lichtenberg on the 22nd, do you know?

THE WITNESS: No.

THE CHAIRMAN: Therefore, you wouldn't know when Mr. Hill spoke with him the day before?

THE WITNESS: Mr. Hill called me immediately after he had received the call.

THE CHAIRMAN: The call from Lichtenberg, things were moving fairly rapidly at this stage?

THE WITNESS: Yes.

MR. HOLLAND: Q. Mr. Hill told you the call was from Lichtenberg tohim?

A. Yes.

MR. CAMP: The day after you called?

THE CHAIRMAN: The day after you signed the agreement.

MR. HOLLAND: Q. You signed the agreement on the 20th and on the 21st Mr. Lichtenberg called Mr. Hill and spoke to him and on the 22nd, you called Mr. Lichtenberg and he told you the decision had already been made?

A. Yes.

Q. How did you get into this conversation about just being a bunch of Canadians trying to keep the place Canadian? What brought that up?

A. I thought it was my ace in the hole, but it backfired. (Laughter)

THE CHAIRMAN: So your ace stayed in the hole.

MR. HOLLAND: Q. Then you told

us you wrote Mr. Lichtenberg a letter?

A. Yes.

Q. I am showing to you a Xerox copy of a letter, Kitchener News Company Limited to Lichtenberg, dated May 3rd, 1971. Can you identify that as the letter you wrote?

A. Yes.

MR. HOLLAND: May this be the next Exhibit?

THE CHAIRMAN: Yes, Exhibit No. 23.

---EXHIBIT NO. 23: Xerox copy of letter, Kitchener News Company Limited to Lichtenberg, dated May 3, 1971

MR. HOLLAND: Q. I believe you have a copy of that letter in front of you. Perhaps we should go through it together. It is dated May 3rd, 1971 addressed to Mr. David Lichtenberg, Circulation Director, Triangle Circulation Company, P.O. Box 500, Radnor, Pennsylvania, 109088:

"Dear Dave:

"As we were previously informed by Harold Hill, the shares in the Kitchener News Company Limited were officially purchased by Mr. Bryan Bramall, Mr. J.D. Cosgrove, Mr. Fred O'Brien, Mr. W.J. Smith, and Gordon and Gotch

Canada Limited. Gordon and Gotch Canada Limited holds a 20 per cent minority interest in the company and has no intention of taking any part in its management.

"We regret, through unanticipated legal problems, we were unable to consult with you and request your approval of this change in ownership as was our intent. We apologize that this news reached you second-hand. However, on behalf of the new shareholders in Kitchener News Company Limited, I would like at this time to make official application for our company to represent TV Guide and the entire Triangle franchise. I am sure you are aware that the former owners did a good job for all your properties. I can assure you that the new owners will do all in their power to ensure that the new management will continue to do a good job and cooperate with your staff to improve, if possible, the services for the franchise. We are willing to come to Radnor at any time to discuss this entire matter. We sincerely hope you will give a

1 favourable reply to our application
2 and respectfully request an early
3 decision.
4 "With my very best regards,
5 "Very truly yours,
6 "Kitchener News Co. Limited,
7 "Frederick O'Brien, President."
8 That was the letter you wrote?
9 A. That is correct.
10 Q. Did you receive any answer
11 to that letter?
12 A. I did not.
13 Q. Have you ever received the
14 courtesy of a reply to that letter?
15 A. I have never received a reply
16 in writing. I had knowledge that Mr. Lichtenberg
17 was leaving on an extended vacation, so I called
18 him prior to the time I heard he was leaving
19 and he informed me at that time the door was
20 always open, but the decision at the moment
21 was that we would not get the franchise.
22 Q. Was that on May 7th, 1971,
23 could you tell us?
24 A. I would suggest it would be
25 approximately that time, yes.
26 Q. Did you arrange to meet him
27 in Detroit on May the 8th?
28 A. At that time we discussed
29 meeting at a banquet in Detroit which we were
30 both going to attend. It was -- I forget the

date.

Q. On May 8th?

A. No. Sometwo or three weeks later.

Q. Did you, in fact, meet Mr. Lichtenberg in Detroit?

A. Just on a social basis due to the fact that in the interim TV Guide people had invited all Canadian wholesalers to a sales meeting and luncheon at the Inn-on-the-Park at which time Mr. Bryan Bramall had requested a formal meeting with Mr. Lichtenberg.

Q. That was June 10th?

A. Yes. So there was really no necessity -- yes, June 10th. It was June -- Monday night or Tuesday night prior to that when we were in Detroit.

Q. I see. So you just met him in Detroit and arranged formally to meet ---

A. No, we had already written to his Canadian manager for an appointment as soon as we could get one. There was really no necessity to speak to him then.

Q. Did you meet on June 10th at the Inn-on-the-Park with Mr. Lichtenberg?

A. Yes, Mr. Bramall and I did.

Q. About what time of day was that?

A. 11:00 o'clock in the morning.

Q. 11:00 o'clock in the morning.

A. Mr. Hugh Crocker was present as well at the meeting in Mr. Lichtenberg's room.

Q. Who was present?

A. Mr. Bramall, myself, Mr. Lichtenberg and Mr. Hugh Crocker.

Q. Mr. Lichtenberg held a 25 per cent interest along with his manager and you held a 25 per cent interest. Who is Mr. Crocker?

A. Mr. Crocker is apparently a new assistant to Mr. Lichtenberg.

Q. And he comes from the United States as well?

A. This is correct.

Q. And what happened at that meeting?

A. At that particular meeting Brian Bramall and I requested reconsideration of TV Guide franchise for the Kitchener area and at this time Mr. Lichtenberg advised us that if for any good and just reason a retailer dealer in the Kitchener area did not wish his supplies from the Metro Toronto News Company, that we would be able to get copies to supply those accounts, subject to a check by one of their Canadian representatives.

MR. CAMP: What is a good and just reason? Could you give an example?

THE CHAIRMAN: These were Mr. Lichtenberg's words, were they not, good and just

reason? I suppose the question, really, could also be who is to be the judge of whether the reason was good and just?

THE WITNESS: Yes, it was subject -- this was subject to being checked out by the TV Guide representative, Canadian.

THE CHAIRMAN: Would Mr. Lichtenberg judge what would be a good and just reason?

THE WITNESS: I don't know, but I would suspect so.

MR. HOLLAND: Q. Did you discuss with him at all what he meant by that term, "good and just reason"?

A. The manner in which he presented it to us, we were quite happy and felt there were many dealers in Kitchener that enjoyed the Kitchener News Service and liked local service, because, even while I differ with Mr. Molasky, as a local wholesaler, we can give better service than Mr. Molasky can in Toronto. We knew of several of the larger accounts in Kitchener that had indicated to us they would much prefer to receive their TV Guides from us, rather than from Metro.

Q. So you thought, following this meeting, if I may put it to you, that if you went to the retailers in Kitchener and got their support, that the distribution of TV Guide for that particular retailer, would be switched back to your company?

A. That is correct.

Q. As a result of this meeting, did you go to these various retailers in the Kitchener area with the request that they support their application to have TV Guide distributed by your Kitchener company?

A. Yes, Mr. Cosgrove, the general manager, visited the top accounts and they agreed they would prefer to have the service from us.

Q. So the retailers wanted service from your Kitchener company and did you pass this information on to Mr. Lichtenberg of Triangle Publications?

A. I passed it on to Mr. Northrop, his manager in Toronto, the Canadian circulation manager.

THE CHAIRMAN: Can we have some indication who some of these retailers were?

THE WITNESS: Yes, Zehr's were one of the biggest chains in Kitchener, food market, Dutch Boy, Shortstop, Ontario Meat Market, Highway Market.

MR. HOLLAND: Q. And did they go along with your request that they would support your application to have TV Guide distributed by your company?

A. Yes.

Q. And did they support that in writing, to the best of your knowledge?

A. Some of them had supported it prior to that time in writing and as far as I know some of them have since written, and as far as I know one of the TV Guide representatives visited these accounts.

Q. And this communication was with Mr. Northorp?

A. Yes.

Q. Who was the local Ontario representative?

A. He is the Canadian manager of their circulation for Canada for TV Guide.

Q. Has Triangle Publications permitted Kitchener News Company to distribute TV Guide in the Kitchener area?

A. Not at this point. The last information I have on that is that Mr. Brian

Bramall contacted Mr. Lichtenberg within the last ten days and Mr. Lichtenberg informed him at that time that he had a report from Toronto on this matter and that we would hear about it.

Q. Who, or what company, in fact, took over the supply of Kitchener or the Kitchener area with the periodicals, including TV Guide and Triangle Publications?

A. Metro Toronto News Company. The initial letter was sent out from Toronto and as far as we know was from Somerset Enterprises but as far as we know all the billing has been done by Metro Toronto News Company not Somerset Enterprises.

Q. Do you have a copy of that letter from Somerset Enterprises Limited?

A. I believe I have. I think that was probably Exhibit No. 5.

THE CHAIRMAN: Let us see that and compare it to Exhibit 5.

THE WITNESS: No, I don't have a copy of it now.

MR. HOLLAND: Q. I am showing you Exhibit 5, is that the letter that you referred to?

A. Yes, it was supplied to us by some retailers who came into our office and were quite concerned.

THE CHAIRMAN: Was it brought in by retailers?

THE WITNESS: The first copy was brought into our office by a retailer, yes.

MR. HOLLAND: Q. When did Metro Toronto News Company take over the distribution of Triangle Publications in the Kitchener area?

A. Mr. Hill, the last week he operated distributing TV Guide, the first week we took over the TV Guide was distributed by Metro Toronto.

Q. So, you never had the distribution rights in that area as the new purchasers of the company?

A. No.

THE CHAIRMAN: I take it, Mr. Holland, than when reference is made to the TV Guide that means that all of the productions, if you will, of Triangle?

THE WITNESS: Yes, that is true.

THE CHAIRMAN: The whole Triangle line?

THE WITNESS: Yes, the whole Triangle line. We are still distributing racing form.

THE CHAIRMAN: Yes, we heard about it before.

DR. JEANNERET: Popular Library went with Triangle?

THE WITNESS: Yes.

MR. HOLLAND: Q. And can you give us

the date, then, the actual date that this distribution was taken over by Metro Toronto News?

A. If I had a calendar -- it would be May 3rd, I would suggest. Now, we did distribute probably anything that was in transit at that time from Triangle, anything that was already in transit of the other items in the Triangle line we probably would distribute them.

Q. So, if I can review the dates with you. You signed the agreement to buy a Kitchener company on April 20th, you received information from Mr. Hill that Triangle would not go with you on April 22nd?

A. 21st.

Q. On April 21st, and by May 3rd, Metro was distributing in the Kitchener area?

A. That is right.

THE CHAIRMAN: I wonder, Mr. Holland, if this might be a convenient time to take a short break?

MR. SEDGWICK: Mr. Chairman, I was going to tell Mr. Holland this. I might as well say it publicly. It has been said to me that Mr. Lichtenberg who is here has to leave this evening and cannot be here next week. I wondered if it would suit the convenience of the Commission and Mr. Holland to interrupt Mr. O'Brien's testimony in order to hear Mr. Lichtenberg? He is obviously an important witness. I don't act for him, I have no control over him, he lives, as you know, in

the States.

THE WITNESS: Mr. Sedgwick, I have no control over Mr. Lichtenberg but he mentioned to my colleague, Mr. Sussman, that he can't be here next week and I wondered if the Commission -- I know you want to hear from him and I wondered if you would consider that?

MR. CAMP: We can always write him a letter.

THE CHAIRMAN: I wonder if we could take this question under advisement? We appreciate your remarks.

---Recess.

THE CHAIRMAN: Can we proceed once again, please?

MR. HOLLAND: Mr. Chairman, just before we recessed there was some question raised by Mr. Sedgwick about calling Mr. Lichtenberg. During the adjournment I have had an opportunity of speaking personally to Mr. Lichtenberg and we have arranged to have him attend on Tuesday next at 10 a.m. here to testify.

THE CHAIRMAN: Very good.

MR. HOLLAND: And Mr. Lichtenberg is agreeable to that.

Q. Also during the adjournment, Mr. O'Brien, you mentioned to me that on resumption there were a few things you wanted to say to the Commission about the evidence you have already given.

Would you please do that?

A. I want to correct one point. As far as Mr. Hill's original conversation with Mr. Lichtenberg was concerned, Mr. Hill informed me during the break that Mr. Northorp originally phoned Mr. Hill and asked Mr. Hill to phone Mr. Lichtenberg so it was the other way around and then, further, on reflection on my conversations with Mr. Lichtenberg there were two other reasons given for us not getting the franchise in Kitchener.

One was the participation of Gordon & Gotch (Canada) Limited which is one of the distributors, which they were not too happy about, having another national distributor involved in a company distributing their publications and, secondly, he was not too impressed with the man whom we had hired as General Manager, Mr. Cosgrove.

Q. Does the Kitchener News Company at present distribute the publications of MacFadden-Bartell?

A. No, they do not.

THE CHAIRMAN: Before we go on I would just like to get this revision sorted out, particularly as it relates to who phoned when on what day?

THE WITNESS: On the 21st of April Mr. Northorp called Mr. Hill and asked Mr. Hill to communicate with Mr. Lichtenberg.

THE CHAIRMAN: What did he communicate

with Mr. Lichtenberg?

THE WITNESS: Concerning the franchise of the news company. At this point we were not keeping it quiet particularly. News gets around.

THE CHAIRMAN: News gets around fast in the industry.

THE WITNESS: Yes, it does.

THE CHAIRMAN: Northorp called Mr. Hill and suggested that Mr. Hill on the 21st contact Mr. Lichtenberg?

THE WITNESS: Yes.

THE CHAIRMAN: So, there was a call from Hill to Lichtenberg and not Lichtenberg to Hill?

THE WITNESS: That is correct, I wished to correct that point.

MR. CAMP: Who got the information about Gotch and Cosgrove, you or Mr. Hill?

THE WITNESS: I didn't hear you, sir.

MR. CAMP: The complaint about Gotch being a distributor, being part of your organization?

THE WITNESS: Mr. Hill got it.

MR. CAMP: What date again?

THE WITNESS: When I called Mr. Lichtenberg it was on the 22nd.

THE CHAIRMAN: On the 21st, was it your understanding that Northorp, before he talked to Mr. Hill he had already spoken to Mr. Lichtenberg?

THE WITNESS: I would only have to

assume that.

THE CHAIRMAN: You don't know?

THE WITNESS: No.

THE CHAIRMAN: Thank you.

MR. HOLLAND: Q. Getting on to MacFadden-Bartell Corporation, can you tell us why you are no longer distributing the publications of that company?

A. I would have to answer by saying that it was the decision of Mr. Al Traina to remove the franchise from Kitchener News and give it to the Metro Toronto News Company. I have no direct knowledge as to why he made his decision.

Q. Who is Mr. Al Traina?

A. Mr. Al Traina is the President of MacFadden-Bartell Corporation.

Q. And is he resident in New York City?

A. His office is there, I presume he lives in New York City.

Q. Did you have any communication with him or anyone else of MacFadden-Bartell Corporation?

A. Yes, on May 4th, Mr. Bramall and I were in Kitchener with Mr. Cosgrove and we heard information that some publishers were considering moving from the Kitchener News Company to Metro Toronto News Company.

Q. Where did you hear that?

A. We heard that by a phone call

from Toronto, that is how we were informed of this.

Q. Who was it who telephoned?

A. A Mr. Jim Smallwood of Simon & Shuster.

Q. And what exactly did he tell you?

A. He told us that the Molasky family were very frankly soliciting other franchises that were presently supplied by the Kitchener News Company and that some of the publishers were considering making the switch. Subsequently we started to make phone calls to --

Q. Now, just a moment. Had Simon & Shuster been approached?

A. Yes, this is where he got the information. His New York office had called him. Mr. Smallwood's New York office had called him.

Q. Would you explain, just for the purpose of the record, what Simon & Shuster is?

A. Simon & Shuster are the publishers and distributors of a particular line of paperback books called Pocketbooks and Cardinal Books and Washington Square Books.

Q. And the local representative of this company then telephoned you and said that there had been an approach made in New York?

A. That is correct.

Q. By the Molasky group?

A. Yes.

Q. To take over the distribution in the Kitchener area of the books supplied by this company?

A. That is correct.

Q. And as a result of that telephone conversation then what did you do?

A. Then Mr. Bramall and I started making phone calls to New York City to the various publishers to determine whether we were, in effect, going to lose Kitchener News altogether or whether we were going to gain.

Q. In other words, whether you were going to lose your $530,000-odd or keep some of it?

A. That is correct. That is a lot of money so, as a result of these phone calls, we discovered that there was some flak in New York so that evening we hopped a plane and went down to New York.

Q. What date would that be?

A. That would be the night of the 4th.

Q. The 4th of ...?

A. May. We flew to New York on the night of the 4th of May.

Q. You were moving pretty quickly at this time?

A. We sure were.

THE CHAIRMAN: So was everybody else.

MR. HOLLAND: Q. And then you spent

the 5th of May in New York?

A. Yes, we did.

Q. What publishers did you visit?

A. We visited the Kable News Company. We visited MacFadden-Bartell Corporation. We contacted International Circulation Distributors by phone and the Publishers' Distributors Corporation. We ran into the Dell Publishing people at lunch, we contacted the Independent News Company, we contacted the Curtis Circulation Company and we contacted New American Libraries who are publishers of Signet books.

DR. JEANNERET: By this time they all knew about your transaction?

THE WITNESS: That is correct.

MR. HOLLAND: Q. Who had told them about the transaction?

A. Mr. Bramall had told them in Miami and also Mr. Hill had written to them but the letter didn't get to New York prior to the time that we had gone to Miami so most of them were informed by Mr. Bramall while he was in Miami.

Q. And what did you find out as a result of these conversations with these distributors in New York?

A. We discovered that the Molaskys were actively soliciting our franchises or the publications which we were distributing through Kitchener News.

Q. Now, have you ever come across this sort of raiding, if I can call it that, before in your experience in this business in Ontario?

A. Not in Ontario or in Canada that I am aware of, no.

Q. And as a result of these calls and visits in New York, did any of these distributors take away the distribution rights that you previously enjoyed?

A. McFadden-Bartell.

THE CHAIRMAN: You met with Traina of McFadden-Bartell, did you not?

THE WITNESS: Yes, we did.

THE CHAIRMAN: On this trip of May the 5th you met person to person?

THE WITNESS: Yes, we did.

THE CHAIRMAN: What did Traina have to say to you at that time about their intention.

THE WITNESS: He had given the commitment to Mr. Bramall in Miami that Kitchener News would be the distributor. Subsequently, when we talked to him in New York, he informed us that he had not made this decision and he would let us know what his decision would be at a later date and would not commit himself on it, one way or the other.

MR. CAMP: When was Mr. Bramall in Miami?

THE WITNESS: Around the end of April he was in Miami.

MR. HOLLAND: Q. I am showing to you a copy of a letter, McFadden-Bartell Corporation to J.P. Cosgrove, General Manager, Kitchener News Company Limited, dated June 3rd, 1971. Did Kitchener News Company Limited receive that letter?

A. Yes, they did.

Q. To summarize the letter, does that letter cancel the franchise on a 30-day basis?

A. Yes, it did.

MR. HOLLAND: May that be the next Exhibit, Mr. Chairman?

THE CHAIRMAN: Exhibit No. 24.

---EXHIBIT NO. 24: Letter from McFadden-Bartell Corporation to J.P. Cosgrove, Kitchener News, dated June 3, 1971

MR. HOLLAND: Q. Was there, in fact, an agreement in existence, that is a written agreement, between Kitchener News Company Limited and McFadden-Bartell Corporation, concerning the distribution of publications of McFadden-Bartell Corporation?

A. Yes, there was.

THE CHAIRMAN: This letter was the first indication you had that Traina of McFadden-

Bartell had made up his mind?

THE WITNESS: Mr. Bramall, who knew Mr. Traina better than any of our group, made several phone calls to Mr. Traina and just prior to the time that this letter was written by his circulation manager, Mr. Traina informed Mr. Bramall by telephone that we would no longer be the representative in Kitchener and would not give any reasons.

MR. CAMP: Then Mr. Traina and Mr. Bramall were in Miami, Mr. Bramall did then report to you the conversation?

THE WITNESS: At the time Mr. Bramall first spoke to Mr. Traina, there was no problem.

THE CHAIRMAN: You didn't gather there was any problem? Mr. Traina was going along with the arrangements?

THE WITNESS: That is right.

MR. HOLLAND: Q. Was any reason given to you or anyone at Kitchener News for this switch other than the reason set out in this letter of June 3rd, 1971?

A. Well ---

Q. "Our management has reviewed the matter and we feel our interests can be served better through another means of distribution."

-- is what the letter says.

A. To my recollection, no. However, if you wish, I can contact Mr. Bramall as he is the man who handled this on our behalf, and I can check that more thoroughly with Mr. Bramall if you wish.

Q. Would you please do that?

A. Yes.

Q. As a matter of fact, is it your belief that the distribution of the publications of McFadden-Bartell Corporation would be better served from Toronto in the Kitchener area, than from Kitchener?

A. No. Certainly, we fully believe in local service in this industry.

Q. Have you had any problems in connection with McFadden-Bartell Corporation in the areas that you manage, Hamilton, Ottawa, for example?

A. None other than the normal course of business. Nothing serious. I might add that the Kitchener News Company has a big trophy behind Mr. Cosgrove's desk, which appointed the Kitchener News Company as the Canadian wholesaler of the year at our last national convention. (Laughter)

DR. JEANNERET: They have had a change of heart.

MR. HOLLAND: Q. I suppose ---

A. We still have the trophy.

Q. You still have the trophy?

MR. CAMP: Who is this year's winner?

THE WITNESS: It is only when we have our national convention and a year ago May, in Montreal, it was presented to Mr. Hill.

MR. HOLLAND: Q. That was for the two years before. There won't be any application the next time.

A. No.

Q. What company is handling distribution in the Kitchener area of McFadden-Bartell Publications at the present time?

A. Metro Toronto News Company.

Q. You have already told us about one meeting at the Inn-on-the-Park, I think on the morning of June 10th, 1971. Did you attend a meeting on the same date in the afternoon in Mr. Molasky's room?

A. Yes, I did.

Q. Who was present at that meeting?

A. Mr. Bramall, Mr. Grubb, who is the general manager of Vancouver Magazine Service.

Q. He had some interest with Mr. Bramall in the 25 per cent of Kitchener News, as I understand it?

A. That is correct.

Q. Who else was there?

A. Mr. Molasky, Mr. Flegel, Mr.

McMonigle and Mr. Romanez and myself.

Q. Mr. McMonigle, again, is the sales manager of Metro Toronto News?

A. That is correct.

Q. This was in the afternoon?

A. Yes, it was.

Q. Now, would you mind telling the Commission generally what was said at that meeting?

A. Generally there were three points made by Mr. Molasky to me and to Mr. Bramall. One, the first point was that if we attempted to move into Toronto with any of the publications which they had franchises for in the Toronto area ---

Q. By "we" you mean Kitchener News Company?

A. Yes. Kitchener News Company, I suppose it refers to me out of Mountain City out of Hamilton. If we attempted to move into Toronto, then, they would immediately move whatever publications they could get into Vancouver, Hamilton, Brantford, St.Catharines and Hamilton.

Q. Did Kitchener News Company Limited, or Mountain City News Company Limited, or anyone else -- any other company you manage or control, have any intention of moving into Toronto?

A. No. We had discussed the matter and realized it was an impossible situation.

We just don't have the clout.

Q. You don't have the clout? What do you mean by the term "clout"?

A. The size and the backup financially. We don't have the financial backing to buck an organization that size.

Q. Before we leave point No. 1, would you explain the significance of the threat of Mr. Molasky to move into Vancouver?

A. Well, to try and take away any franchises they could get and operate as a wholesale operation in Vancouver.

Q. Who had Vancouver at that time?

A. Mr. Brian Bramall is the president of Vancouver Magazine Service.

Q. Can you explain the significance of the threat to move into Vancouver?

A. My brother-in-law, Mr. Reg. Jackson, has the franchise in the St.Catharines area and it is the same thing. He would take whatever franchises he could to move into the St.Catharines area.

THE CHAIRMAN: What do you mean by this? We are trying to get what you understood. I think this is what counsel is after. What do you mean by saying they would try to get the franchises away?

THE WITNESS: They would try to get Select or Triangle or Gordon and Gotch or Capital or some publisher to go with them and

not with Vancouver Magazine, or not with Seaway News in St.Catharines.

THE CHAIRMAN: If they were successful in getting these distributors to go along, what would that mean to the person serving Vancouver or Brantford or St.Catharines?

THE WITNESS: He would lose that volume.

THE CHAIRMAN: What would that mean to him ultimately?

THE WITNESS: It would mean serious curtailment of his business and profits and reduction of staff, if any.

THE CHAIRMAN: He would extinguish his business?

THE WITNESS: He could.

MR. CAMP: In other words, they would do unto you elsewhere what they had done to you in Kitchener?

THE WITNESS: You said it.

MR. HOLLAND: Q. Is that what you understood?

A. That is the way I understood it. I took it as an implied threat.

MR. CAMP: If I may just ask one question. Did you or any of the principals in the Kitchener company, ever indicate to Messrs. Molasky, Flegel et al, that you had in mind considering the possibility of extending your operations?

THE WITNESS: No, never.

MR. HOLLAND: Q. Let us move on to point number 2.

A. The second point is there is a small company in Hamilton called the Wentworth News Company which I have been trying to buy for many, many years. With the death of the owner, I felt, of course, at this time, maybe I would have a better opportunity. I have been unsuccessful, but I thought it would be a better opportunity. Mr. Molasky informed me at the time that if and when Wentworth News was to be sold, that he would probably have a better chance of getting it than I would and that if he did get it, then he would operate in Hamilton the same way he is operating in Kitchener.

Q. What did you understand by saying he would operate in Hamilton in the same way as he had in Kitchener to mean?

A. I would only have to assume that in addition to the TV Guide franchise, which he would get with the purchase of the company, he would have the other franchises and he might also attempt to take my bigger dealers, which he was attempting to do with all of the lines of all these people in Kitchener at that time, which we were aware of.

Q. What was the third point that was made?

A. The third point that was made,

Q. And then do you, in supplying their various outlets conform to this authorization?

A. Yes.

---EXHIBIT NO. 17: "Suggested Authorized Title List, Canadian Railway News."

Q. So that in the case of Canadian Railway News, the selection is made by Canadian Railway News, is that correct?

A. Absolutely.

Q. Now, do you also supply A & P Stores?

A. Yes, we do.

Q. Do they have a great many outlets?

A. Yes, they do.

Q. And who makes the selection of what appears on the racks in the A & P Stores?

A. The A & P management, buyers.

Q. I have in my hand a document which says,

"Attachment re blanket order effective February 1, 1971, A & P Stores, Canada, magazine master list approved publication."

Will you look at that one, please?

A. Yes, that is right.

Q. Do you recognize that, Mr. Romanez?

Q. Now, I gather an inference from your answer just now that you were not doing very much talking at this meeting?

A. No. Well, Mr. Bramall, Mr. Grubb and I had agreed in advance that we would go and listen and find out what they had to say.

MR. CAMP: They invited you?

THE WITNESS: They invited us to come to the meeting.

MR. HOLLAND: Q. Who was doing the talking?

A. Mr. Molasky and Mr. Flegel.

MR. CAMP: Who is Mr. Flegel again?

MR. HOLLAND: Q. Mr. Flegel is one of the managers of Pierce News Company from St.Louis, I understand?

A. Yes.

MR. CAMP: Mr. Romanez was there?

THE WITNESS: Mr. Romanez and Mr. McMonigle were there.

MR. HOLLAND: Q. So the meeting was being run by the gentleman from St.Louis?

A. Yes.

Q. Then you said you wanted time to consider?

A. May I say, I wanted time to cool off. I was a little upset.

Q. How much time did you ask for or how much time did they give you?

A. Well, I ran into Mr. Molasky that evening and he suggested ---

Q. This was at the sociable drink at 2:00 o'clock in the morning?

A. At 2:00 o'clock in the morning, that is right, or thereabouts. Then I said we would be back in a few days. I think approximately that is what I said.

Q. And then, on the 14th, legislation was introduced?

A. That is correct.

Q. And, as a result of that, what happened in connection with these negotiations?

A. Mr. Molasky called me from St.Louis and said that, as a result of this legislation, his offer to purchase Hamilton, Brantford, St.Catharines and Kitchener was off.

DR. JEANNERET: The sale of Western Ontario Distributors, Lambton News Service and TV Carrier Sales, which actually closed on June the 11th, has no bearing on any of this at all?

THE WITNESS: None.

DR. JEANNERET: When did you hear about that?

THE WITNESS: I knew negotiations were going on all that week.

MR. HOLLAND: Q. You have mentioned the fact that, as a result of this purchase in Kitchener, you lost two franchises, if we can call them that, in the Kitchener area, but

you also mentioned that there had been some activity amongst the big dealers or retailers in Kitchener? What did you mean by that? Had Metro Toronto News tried to move into the retailers in the Kitchener area?

A. Yes, they approached Zeher stores, Dutch Boy, Highway Markets, Short Stop and some other stores with these family reading centres in which they suggest -- by the way, we had already inquired of them about the same thing -- that they would build these racks and install them and they would supply them with all the merchandise. Now, in addition to that, they did build two racks and put in two pocketbook installations in two regular dealers, one in Hespeler named Cochrane and one in Galt by the name of Tobbs, and they put in the equipment but then, after the equipment was in, advised the stores, I gather, I have to assume this, because of the legislation that they would only be able to supply them with the TV Guide.

Q. Kitchener News Company is now using those racks?

A. Yes.

Q. Did Metro Toronto News Company succeed in converting, if I can use that term, any of the retailers in the Kitchener area, to their system of racks?

A. Well, I assume that both Cochrane and Tobbs Discount had agreed to this.

They are the only two that I am aware of. None of the supermarkets or the big chains involved had agreed to it that I am aware of.

MR. HOLLAND: Mr. Chairman, those are all the questions I have at this time. I do point out to you that it is now just about a quarter to five.

THE CHAIRMAN: I think what we would like to do is complete Mr. O'Brien's evidence.

MR. CAMP: I don't want to put words in your mouth or thoughts in your head, Mr. O'Brian, but in your conversations with Mr. Molasky, if they could be called that, was it in your mind or did he communicate the impression to you, that he had some special status or understanding as a result of which he could jeopardize all your operations?

THE WITNESS: The name Triangle or the name McFadden-Bartell, were never used in the sense that you are suggesting. It was just that they would move in on our territory, no specific publisher was mentioned.

MR. CAMP: I have another question which bears on something else. Your purchase of the Kitchener operation, how did you do your financing?

THE WITNESS: Some money we produced ourselves and some we borrowed from the Royal Bank of Canada.

DR. JEANNERET: Just a general question, Mr. O'Brian. Barring one little gap in your list of Triangle and McFadden-Bartell, your operation seems to be in Kitchener pretty much the same thing, parallel in all respects, to the Metro Toronto operation in Toronto, is that right?

THE WITNESS: On a more modest scale.

DR. JEANNERET: On a more modest scale, when you say that, do you have the intervening jobbers between you and small, small retailers?

THE WITNESS: No.

DR. JEANNERET: Do you sell the booksellers -- many, I know, but do you supply mass market paperbacks, for example, to the booksellers in your area?

THE WITNESS: Yes, we sell them, but primarily we supply most of the accounts with mass market books.

DR. JEANNERET: When you supply them, what discount do you use?

THE WITNESS: Depending on their sales volume they will get either 30 per cent or 20 per cent.

DR. JEANNERET: I presume that if they buy direct, they can get 40 per cent?

THE WITNESS: Yes, but I think, as Mr. Romanez tried to point out this morning, the service that we perform for the dealer is

more attractive to him than the extra 10 per cent. We will produce more sales with him and put more money in the till, as he said this morning, by the service that we will perform for him.

DR. JEANNERET: To your knowledge, are your accounts free to purchase their mass market paperbacks either from you or from the publishers and publishers' representatives?

THE WITNESS: I would suggest, yes, but I would suggest also that a publisher would not be inclined, for economic reasons, to supply mass market paperbacks to a small dealer. I don't think that he would be inclined to. He would much prefer to do it through us.

DR. JEANNERET: You mean he would exercise some kind of prerogative or assume some kind of prerogative to refuse an order for a quantity which he would fill to another dealer?

THE WITNESS: Yes. If a mass market was supplied direct, then we usually do not supply that dealer with our products, possibly just magazines or possibly nothing at all. If a publisher decides to go direct, then all the paperback books go to that dealer direct from the publisher.

DR. JEANNERET: But you would not exclude him from your periodicals?

THE WITNESS: No, if he so desires.

DR. JEANNERET: Do you supply the student requirements of Waterloo and the University of Waterloo?

THE WITNESS: We do. Well, wait a minute. I believe that the University of Waterloo has recently gone direct. Now, that I am sure Mr. Cosgrove can answer, if you would like to ask him that.

DR. JEANNERET: To your knowledge, did they encounter any difficulty in making the switch? When you say they went direct, you mean they went direct with the whole series of mass market paperback publishers?

THE WITNESS: Yes.

DR. JEANNERET: They must have done it, from what you tell us, in one, clear step.

THE WITNESS: Yes, they probably got one publisher to go along and another one, and so on.

DR. JEANNERET: But your position, if I understood your evidence a moment ago, is that, if you had known of one or two that had gone along, then you would cut them off?

THE WITNESS: No, we would have supplied them. If you would like, I could refer to McMaster University in Hamilton better, because I am more familiar with it.

DR. JEANNERET: Let us hear about McMaster.

THE WITNESS: McMaster buy all

their paperbacks direct, except, if they want something of a small nature in a hurry, and then they will call us and we will supply it.

DR. JEANNERET: The University reading requirements, being as peculiar as they are, and widespread and fairly substantial in many areas, do you have any system of back ordering when you are not able to supply?

THE WITNESS: Yes, we do, and if you would like to get into that area, we have a subsidiary company out of the Hamilton area, called Academic Book Caravan, which is a partnership between St.Catharine's Wholesaler, Brantford Wholesaler, in which we have extensive display rooms and display 4000 titles and we sell on a very energetic basis to all the school boards, libraries, librarians, students, teachers in the area.

DR. JEANNERET: That was going to be my next question. What do you do in Kitchener? Does it operate there?

THE WITNESS: Kitchener, at the present time, sells directly to the school boards as Kitchener News Company. I might say that we are considering bringing Kitchener into the Academic Book Caravans because we feel we can give better service in that way. We are only considering that.

DR. JEANNERET: Where do you give 30 per cent on the mass market paperbacks? Is this

decided by quantity?

THE WITNESS: Primarily by volume, yes.

DR. JEANNERET: By volume of the account of by volume of the order?

THE WITNESS: No, by volume of the account. Now, in the case of the regular mass market, it would be 30 per cent, if it was a 30 per cent account. In the case of schools, let us say we got an order from a public school in Hamilton for 300 titles, one copy per title, that is extremely expensive to service. Now, we might only give 10 or 15 per cent on that order, but if we got an order from that school for 500 of one title, we would give them 30 per cent.

DR. JEANNERET: You would give the school board 30 per cent in that case?

THE WITNESS: Yes.

MR. CAMP: Getting back to the meeting of June 10th, is there any mention of Curtis Publishing?

THE WITNESS: Mr. Molasky said that Curtis was not firm with us at that time.

MR. CAMP: You were reassured?

THE WITNESS: We were not reassured. Once again, Mr. Coombs did not give us a firm commitment at that time.

MR. CAMP: You have made it firm?

THE WITNESS: We have the same contract with them now. I believe Mr. Cosgrove

has that contract.

THE CHAIRMAN: I wonder, then, if that could be given to us, subsequently, -- possibly a copy of that?

THE WITNESS: Yes.

MR. CAMP: Mr. Cosgrove is associated with you as part owner?

THE WITNESS: As part owner and general manager.

MR. CAMP: How long has he been in the business?

THE WITNESS: 20 years.

MR. CAMP: And in your association with him, you have found him efficient, competent and knowledgeable?

THE WITNESS: Yes, and I would say the same thing of Mr. Smith too.

THE CHAIRMAN: This question I want to phrase with some degree of care and I hope I phrase all of my questions like that, but, in any event, we have already heard quite clear evidence from Mr. Molasky that Triangle did, in fact, move away from Kitchener to Metro Toronto News and that Mr. Molasky himself had solicited McFadden-Bartell and all the other distributors and succeeded in getting McFadden-Bartell. Now, in connection with your own position, in relation to all of the other places that you have an interest in, such as Brantford, Hamilton, St.Catharines and Ottawa, do you know

of anything that would prevent Mr. Molasky or his associates, or any other major wholesaler, from soliciting in New York or wherever he required any one of those distributors to move away from you in these other places?

THE WITNESS: No. Likewise I could do the same.

THE CHAIRMAN: You could do the same?

THE WITNESS: That is right.

THE CHAIRMAN: You would consider that on the basis of who was the most vulnerable? Would you consider yourselves to be vulnerable on this basis?

THE WITNESS: We consider ourselves very vulnerable.

THE CHAIRMAN: Very vulnerable?

THE WITNESS: Yes.

MR. CAMP: You will let us have the date of that previous agreement?

THE WITNESS: We will have it. We will produce the document and give you a copy.

THE CHAIRMAN: I think that because Mr. Sedgwick's clients are interested in the evidence that has been given here we are to give Mr. Sedgwick the opportunity to cross-examine this witness.

MR. SEDGWICK: Now?

THE CHAIRMAN: Does it not meet your convenience? We could do it on Monday at 10 a.m.

MR. SEDGWICK: I will not be terribly long but I have with me Mr. Sussman who is returning to St. Louis and he is more familiar

with the operation than I am. He had some questions he wanted to ask. It is five o'clock.

THE CHAIRMAN: Rest assured that we are prepared to hear Mr. Sussman.

MR. SEDGWICK: Very well, That is why I raised it now.

THE CHAIRMAN: We are prepared to have the witness questioned by Mr. Sedgwick but we are not, at this point, convinced that attorneys from out of the province ought to be permitted to participate in the proceedings.

MR. SEDGWICK: That is what I was thinking about. I think Mr. O'Brien will be back in any event on Monday because he has a clear and continuing interest. Could I reserve my cross-examination until Monday morning?

THE CHAIRMAN: I don't think we have any objection.

THE WITNESS: I shall be here Monday morning but due to the nervousness of myself I prefer it now, but if that is your wish --

THE CHAIRMAN: I think for the convenience of all concerned, if you could return on Monday morning at 10 a.m. we will take you then.

THE WITNESS: Thank you.

THE CHAIRMAN: We will now adjourn.

---Adjournment.